HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 25, 2013
83rd Legislature, Number 59
The House convenes at 10 a.m.

Nineteen bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

Three postponed bills - HB 519 by Zerwas and Ratliff, HB 578 by Guillen, and HB 611 by Guillen - are on the supplemental calendar for second-reading consideration today. The analyses of these bills are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Local, Consent, and Resolutions Calendar today.

The following House committees had public hearings scheduled for 8 a.m.: Defense and Veterans' Affairs in Room E2.012 and Homeland Security and Public Safety in Room E2.010. The Criminal Jurisprudence Committee had a formal meeting scheduled for 9:30 a.m. in Room 3W.9.

The following House committees have public hearings scheduled for 10:30 a.m. or on adjournment: County Affairs in Room E2.016 and the Select Committee on Criminal Procedure Reform in Room E2.028.

Bill Callegari
Chairman
83(R) – 59

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, April 25, 2013
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SUBJECT: Continuing the State Pension Review Board

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Callegari, Branch, Frullo, Gutierrez, P. King, Stephenson

0 nays

1 absent — Alonzo

WITNESSES: For — (*Registered, but did not testify:* Javier Gutierrez, McAllen Firemen's Relief and Retirement Fund; Sampson Jordan; Austin Police Retirement System; Juan Loya; Roberto Martinez; Baldomero Ozuna; Maxie Patterson, TEXPERS)

Against — (*Registered, but did not testify:* David Crow, Arlington Professional Fire Fighters Association; Quentin Huser and Jerry Sutton, TLFFRA)

On — Christopher Hanson, Pension Review Board; Michelle Kranes, Sunset Advisory Commission staff; (*Registered, but did not testify:* Manuel Vargas, McAllen Firefighters Relief and Retirement Fund; Joe Walraven, Sunset Advisory Commission)

BACKGROUND: The State Pension Review Board (PRB) was created in 1979 to oversee state and local public retirement systems through ongoing assessments of the systems' actuarial and financial soundness. The agency also provides legislators and the public with information on pension-related topics. The PRB:

- reviews state and local retirement systems' financial and actuarial conditions, and highlights potential problems;
- collects and aggregates information on the systems and relevant pension-related topics;
- assesses the actuarial impact of proposed legislation related to public retirement systems; and
- offers education for public retirement system trustees and administrators.

The PRB's nine-member board includes seven members appointed by the governor, one House member appointed by the speaker, and one Senate member appointed by the lieutenant governor. The governor's appointees must include:

- three members with experience in securities investment, pension administration, or pension law, but who are not members or retirees of a public retirement system;
- one member who is an actuary;
- one member with experience in government finance;
- one member who is contributing to a public retirement system; and
- one member who is receiving retirement benefits from a public retirement system.

At the end of fiscal 2011, the PRB employed a staff of 12. It received $667,249 in general revenue and also collected $7,600 in registration fees to help fund its annual seminar.

There are 352 public retirement systems registered with the PRB representing more than 2.4 million members and more than $200 billion in assets. The four largest statewide retirement systems, which account for a large majority of these individuals and assets, are exempt by law from reporting to PRB, but voluntarily submit reports.

The agency's principal focus is on the remaining systems that have about 300,000 members and $49 billion in assets. These include 13 municipal and public safety plans established in state law, four municipal plans established in city ordinance, 210 plans established by districts or other governmental entities, and 127 firefighter plans organized under the Texas Local Fire Fighters' Retirement Act.

DIGEST:

HB 2198 would continue PRB until September 1, 2025.

The bill would exclude certain retirement plans that were not traditional defined benefit pensions from certain reporting requirements, amend other reporting requirements, and establish provisions for online training.

Defined benefit plans. HB 2198 would remove defined contribution plans and certain local volunteer firefighter pay-as-you-go defined benefit plans from most PRB reporting requirements. These plans would still be required to register, provide a summary of member benefits and report

significant plan changes. Defined contribution plans and certain local volunteer firefighters' plans would be exempt from filing actuary studies, five-year audits, actuarial experience studies, annual reports, the number of members and retirees, and written investment policies.

The bill would define "defined contribution plan" as a plan that provided an individual account for each participant and paid benefits based solely on the amount contributed to the participant's account and any income, expenses, and investment gains or losses.

The bill would exempt certain local volunteer firefighter retirement plans from the statutory requirement to have their accounts audited at least annually by a certified public accountant but would not include this exemption for defined contribution plans.

HB 2198 would repeal a provision that allows local firefighter pension plans with less than $50,000 in total assets to make annual financial reports to the firemen's pension commissioner instead of the PRB.

Reporting requirements. The bill would shorten the time frame for reporting significant plan changes that affect contributions, benefits, or eligibility from 270 to 30 days. The shortened reporting requirement would apply to plan changes adopted on or after September 1, 2013.

HB 2198 would define "actuarial experience study" and the time frame for reporting such studies. This provision would not require any systems to conduct experience studies, merely to send them to PRB if they choose to perform them. The bill would define "actuarial experience study" as one in which actuarial assumptions were reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions required adjustment. Any study done after September 1, 2013 would be submitted to PRB within 30 days of adoption by the pension system governing board. This reporting requirement would not apply to five statewide retirement systems already exempt from most PRB reporting requirements.

The bill would stipulate that an overall financial audit of the governmental entity sponsoring the pension plan would not satisfy retirement systems' annual financial reporting requirements.

Training. HB 2198 would allow PRB to offer live, online training

seminars via the Internet and maintain Web-based archives of previous seminars as part of its mission to develop and conduct training sessions and other educational activities for pension system trustees and administrators. The bill would direct the agency to use technology and innovations to reach the largest audience.

Conflict of interest. HB 2198 would prohibit a person from being appointed as a PRB board member or high-level agency employee if the person or the person's spouse were closely affiliated with a pension-related professional trade association. It would define "Texas trade association" as a cooperative and voluntarily joined statewide association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The prohibition on board appointments would apply only to a member appointed on or after September 1, 2013.

The bill also would add standard sunset provisions regarding the use of negotiated rulemaking and alternative dispute resolution.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Texas has a large number of local retirement systems that provide defined benefit plans. The state needs a way to monitor these plans and work with them to help ensure they remain financially and actuarially sound without unnecessarily burdening taxpayers. A central source like the PRB serves as a forum for public pension accountability and Sunset staff could not identify potential savings from any PRB consolidation.

Focus on defined benefit plans. HB 2198 would recognize the shift in the pension landscape that has lessened the reliance on mostly defined benefit plans to a mix that includes pay-as-you-go defined benefit plans and defined contribution plans. Exempting these defined contribution and pay-as-you-go plans from unnecessary reporting requirements would allow the agency to focus on traditional defined benefit plans that pose the greatest financial risk to taxpayers and retirees. However, the bill would preserve basic registration requirements for defined contribution and pay-as-you go plans so PRB could continue to respond to complaints.

PRB oversight tools were designed for traditional defined benefit plans and have little value for plans that are not actuarially funded and pose no significant risk of leaving unfunded liabilities for taxpayers. Currently,

unclear and outdated statutory provisions cause PRB to waste time tracking compliance with reporting requirements that were never intended for low-risk defined contribution retirement plans, such as 401(k)s. Pay-as-you-go plans provide a specific benefit for life, but the benefit is often small and the plans are not pre-funded. The sponsoring entity simply pays benefits as they become due. Pay-as-you-go plans average payouts of $3,000 a year per retiree.

Reporting requirements. The bill would shorten the time frame for reporting significant plan changes so PRB could analyze the changes to determine if a system was accruing new unfunded liabilities. The agency then could make the retirement system aware of the future effects on actuarial soundness in a timely manner.

HB 2198 would clarify that an audit of a sponsoring entity, such as a city, would not satisfy a defined benefit system's annual reporting requirements. Some pension funds have used this lack of clarity as a loophole to avoid sending PRB a system audit. Sunset staff found that in fiscal 2011, nearly 20 percent of the traditional defined benefit pension systems submitted their sponsoring entity's audit, and the problem is growing. While a city audit may include information about the plan, it is not a comprehensive audit of the retirement system and lacks detailed analysis of the plan's transactions. Without a full system audit, PRB staff is limited in its ability to analyze a system's financial condition.

Training. The Sunset review found that the PRB's training efforts — centered on an annual conference in Austin — are not reaching retirement systems with the greatest needs. HB 2198 would allow training using Web-based technology so smaller systems with limited travel budgets could access PRB assistance. A survey of pension systems conducted by Sunset staff revealed that many systems lack full-time staff and the trustees need more narrowly focused, Texas-specific content on topics such as sound plan design, asset allocation, implications of statutory changes, and best practices for contracting with actuaries and investment managers. The bill would allow the PRB to provide training on those and other topics in a more cost-effective way.

OPPONENTS SAY:

HB 2198 would remove important oversight from hundreds of local volunteer firefighters' pension plans. Many of these plans want to retain their connection with the PRB. While pay-as-you-go and defined contribution plans may not pose the risk to taxpayers as traditional defined

benefit plans, they still need oversight to make sure they are handling funds properly. Reducing the reporting requirements for these plans would diminish the amount of information the PRB could provide members of the Legislature and others regarding the entirety of public retirement systems statewide.

The bill would clarify that pension systems could not submit audits of their sponsoring entities in lieu of an annual audit of the retirement plan. This would mean that all defined benefit plans, even those with relatively small assets, would have to spend money on costly annual audits even though the city audit already includes financial information about the plan.

NOTES:

The companion bill, SB 200 by Patrick, was passed by the Senate on April 2. It would remove the House and Senate member appointees from the PRB's nine-member board. The House Pensions Committee on April 10 reported SB 200 favorably as substituted. The substitute would change the expiration date for the legislative appointees' terms from September 1, 2013 to January 31, 2017.

SUBJECT: Commissioners court oversight of certain emergency services districts

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 5 ayes — Farias, Hernandez Luna, Hunter, Kolkhorst, Stickland

0 nays

4 absent — Coleman, M. González, Krause, Simpson

WITNESSES: For — Jo Anne Bernal, Veronica Escobar, and Vincent Perez, El Paso County; (*Registered, but did not testify*: Steve Bresnen, El Paso County)

Against — John Carlton, Texas State Association of Fire and Emergency Districts, El Paso County Emergency Services District No. 2)

On — Don Wilson (Texas Commission on Fire Protection)

BACKGROUND: Emergency services districts (ESDs) are governed by Health and Safety Code, ch. 775 and provide emergency medical and ambulance services, emergency rural fire prevention and control services, or other emergency services authorized by the Legislature. Each ESD is led by a five-member board appointed by a county commissioners court. The board may set a tax rate, administer services, and approve a budget and major purchases. The ESD may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property. It may enter into contracts and lease, own, maintain, operate, and provide emergency services vehicles, equipment, and machinery to provide emergency services.

Chapter 775 also requires an ESD's board, upon request by December 31 from the commissioners court, to submit a written report by February 1 of the following year about its budget, tax rate, and debts for the preceding fiscal year. The ESD must allow the county auditor access to its books, records, officials, and assets. By June 1 of each year, it must file an audit report of its fiscal accounts and records.

DIGEST: CSHB 685 would amend the Health and Safety Code, ch. 775 to give the commissioners court of a county government that borders Mexico and has a population of more than 800,000 residents (El Paso County) certain

authority with respect to the tax rates, budgets, and business operations of emergency services districts (ESDs) in the county. It would increase the requirements for an ESD to report to the county commissioners court its performance and fiscal status and would require an ESD to encourage and promote participation of all sectors of the business community, including small businesses and businesses owned by minorities or women.

Powers. The bill would allow the county commissioners court to establish policies and procedures with which the board of the ESDs had to comply when dealing with property, equipment, goods, services, facilities or systems to maintain a facility or provide service to a district. This would include how services were provided and public funds were used for a volunteer fire department or emergency service provider.

The policies and procedures would have to:

- set purchasing price thresholds for the district that would determine when permission from the county commissioners court was required for certain purchases; and
- designate a person from the county who would serve as the district liaison between the commissioners court and the board.

The policies and procedures could require the district's board to submit to the county commissioners court periodic reports on the district's compliance and could not be established until the commissioners court consulted with the board.

Delegation and waiver of duties and requirements. The commissioners court could delegate a duty to an ESD board or waive a requirement of the court to approve an action of the district and could terminate this delegation of a duty or waiver.

Budget. The county commissioners court would have to establish a schedule for ESDs to prepare an annual budget, tax rate calculations and notices, and a proposed tax rate, which the district would submit to the commissioners court for final approval. The submission to the commissioners court would require a reasonable time for review. The district also would be required to submit its tax rate calculations and notices and a proposed tax rate to the county auditor.

If the county commissioners court did not approve or deny the budget or

proposed tax rate submitted by the district within 31 days after each was submitted, the court would be considered to have approved the budget or proposed tax rate.

Business participation. The bill would require a district's board to develop a plan for the district to identify and remove barriers that unfairly discriminated against small businesses and businesses owned by minorities or women.

The budgetary and tax rate provisions of the bill would take effect January 1, 2014.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 685 would give El Paso County government the necessary authority to prevent poor business management and the misuse of public funds at an emergency services district (ESD). It would add a layer of transparency at the district that would honor taxpayers and provide El Paso County government with reasonable authority that would not impede ESDs from performing their duties.

CSHB 685 would help deter the misuse of tax revenue at the ESDs in El Paso by increasing the county government's fiscal and operational oversight of these publicly supported entities. A recent county audit showed poor financial management at one of El Paso's two ESDs, as well as failures in reporting financial decisions, which this bill would address. County government control over districts' purchasing, budgetary, and taxing processes would safeguard public funds and shed light on the financial decisions made by the districts' unelected board members and officials.

The bill would provide El Paso with a proactive approach to local taxing entities that would yield accountability and transparency. CSHB 685 would create the same kind of oversight that has made the El Paso County Hospital District a streamlined and money-making taxing entity. Although the county commissioners court can already remove board members from an ESD, it has no recourse for taking action against employees or volunteers of the district who may be responsible for poor financial or managerial decisions. CSHB 685 would allow the commissioners court to not have to wait for a crisis before taking action. It also would allow the commissioners court to transfer duties back to the district and waive

requirements for approval.

OPPONENTS SAY:

CSHB 685 would be unnecessary because county governments already have fairly comprehensive oversight of ESDs and ceding more authority to a county commissioners court would be invasive for day-to-day ESD operations. Seeking approval from the county commissioners court for every budget, as the bill would require, would be cumbersome for ESDs. As it stands, all of the board members who direct the ESDs in El Paso are appointed by the commissioners court so there already is adequate county government accountability. Also, state statutes stipulate that ESDs, upon request, provide the county commissioners court with a financial report each year, and county auditors already have access annually to financial records of a district.

NOTES:

The companion bill, SB 332 by Rodriguez, was passed by the Senate by a vote of 31-0 on April 11.

The committee substitute differs from the bill as filed by:

- applying to a district that is wholly located in the county, rather than wholly or partly;
- adding appointment of the board of emergency services commissioners by the commissioners court to define affected county;
- stipulating that the county commissioners court could delegate or waive duties and approval requirements;
- allowing the county commissioners court to establish policies and procedures for the board;
- removing leasing guidelines for the district;
- adding authority and requirements for policies and procedures established by the commissioners court;
- deleting a section in the original regarding board authority to contract with approval of the commissioners court;
- deleting the county authority to sell, lease, and purchase facilities for district purposes;
- requiring the district to establish a schedule for presenting certain information to the county commissioners court and adding to the items that would be presented;
- requiring a reasonable time to review the district's budget and tax rate proposals;
- stipulating that the district would submit its budget and tax rate

proposal for approval by the commissioners court and submit its proposed tax rate to the county auditor;

- stipulating that the budget and tax rate would be approved if the commissioners court did not approve the budget or tax rate before the 31st day they were submitted for review;
- deleting a provision addressing commissioners court authority with respect to an ad valorem tax;
- adding that the budgetary and tax rate provisions of the bill would take effect January 1, 2014.

SUBJECT: Confidentiality of certain autopsy records

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

WITNESSES: For — John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify:* Leonardo Coelho, Travis County Commissioners Court; Claudia Russell, El Paso County; Cathy Sisk, Harris County; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — Joseph Larsen, Freedom of Information Foundation of Texas; (*Registered, but did not testify:* Michael Schneider, Texas Association of Broadcasters)

On — Amanda Crawford, Office of the Attorney General

BACKGROUND: Government Code, ch. 552 is the Public Information Act, which ensures public access to records and other material maintained by governmental bodies. Government Code, ch. 552, subch. G requires a governmental body wishing to withhold requested public information that it considers to be excepted from public disclosure to ask for a decision from the attorney general about whether the information is within that exception and therefore may be withheld.

Code of Criminal Procedure, art. 49.25, sec. 11 governs medical examiner records of death investigations. It states that the records are subject to disclosure under the Public Information Act, except that photographs and x-rays taken of a body during an autopsy are excepted from disclosure unless:

- they are required under subpoena or authority of other law; or
- the subject of the photographs or x-rays died while in the custody of law enforcement.

Government Code, sec. 552.108 provides an exception to the Public Information Act for certain law enforcement information. Under certain circumstances, information held by a law enforcement agency or prosecutor relating to the detection, investigation, or prosecution of a crime is not subject to public disclosure.

DIGEST:

CSHB 688 would allow a unit of government to withhold a photograph or x-ray of a body taken during autopsy that was not subject to disclosure under Code of Criminal Procedure, sec. 11, art 49.25 without requesting a decision from the attorney general. The bill would not affect the required disclosure of photographs or x-rays that fall under the section's two exceptions.

The bill would take effect September 1, 2013 and would apply only to requests for information received on or after that date.

SUPPORTERS SAY:

CSHB 688 would save county offices and the attorney general's office time and effort spent on unnecessary paperwork. Although the Code of Criminal Procedure excepts most autopsy photographs and x-rays from public disclosure, governmental bodies that hold these records, generally county offices, are still required to write a letter to the attorney general to confirm this exception when they are requested. The exception for autopsy photographs and x-rays is clear cut and easy for the governmental body holding the records to apply. Requiring a letter from the attorney general to confirm this established exception wastes time and resources.

CSHB 688 simply would remove an unnecessary bureaucratic step and would not erode transparency. When this exception is cited, the resulting decision from the attorney general nearly always confirms that the records in question fall under the exception. Exceptions to the general rule requiring an attorney general's decision have been implemented for other kinds of records without a deleterious effect on government transparency.

Because of their sensitive nature, autopsy photographs and x-rays deserve special consideration. These images require additional protection because they have been increasingly abused with the growth of the Internet. Graphic and disturbing autopsy photographs released through the Public Information Act sometimes are posted online and widely disseminated, which is an abuse of the law's intended purpose and a violation of the privacy of the subject and his or her grieving family. Autopsy photographs and x-rays should remain excepted from mandatory disclosure except

under special circumstances when public interest trumps the privacy and interests of the deceased person they depict.

OPPONENTS SAY:

CSHB 688 would not have a significant impact on the time and work that counties and the attorney general spend on these decisions, at a potentially large cost to government transparency. Any time or resources CSHB 688 would save would not be worth the negative effect on government oversight. Requests relating to autopsy photographs and x-rays are a small portion of the request letters the attorney general receives every year. Previous efforts to relieve the burden on the attorney general by exempting governmental bodies from the letter requirement have had no significant impact on the number of letters the office received. The fiscal note confirms that any reduction in the workload of local government units resulting from this bill would not achieve significant cost savings.

CSHB 688 would erode government transparency by removing important oversight mechanisms. With few exceptions, requests for attorney general decisions are required when a governmental body decides to withhold information it believes is not subject to disclosure. This provides a necessary check to prevent governmental bodies from incorrectly withholding information the public should be able to access. Carving out a special exception for autopsy photographs and x-rays that would allow governmental bodies to withhold them without going through the attorney general would short-circuit a crucial oversight process.

Over time, the availability of these records has been diminished by new laws, attorney general opinions, and the increased use of the law enforcement exception in Government Code, sec. 552.108. If a death is important enough to warrant an autopsy, it also merits access by the public, even if it relates to the ongoing investigation of a crime. Although public posting of these photographs and x-rays is deplorable, the potential for abuse does not disqualify the public's interest in accessing them nor nullify the need to preserve the strength of the Public Information Act.

NOTES:

CSHB 688 differs from the bill as filed by specifying that the bill would not affect the required disclosure of a photograph or x-ray under the section's two exceptions.

The companion bill, SB 457 by Rodríguez, was passed by the Senate by a vote of 31-0 on April 11. It was reported favorably by the House Committee on Criminal Jurisprudence on April 23.

SUBJECT: Adjusting Department of Agriculture's regulatory programs and penalties

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

WITNESSES: For — *(Registered, but did not testify:* Doug DuBois, Jr., Texas Food & Fuel Association; Debbra Hastings, Texas Oil & Gas Association; Gary Walker*)*

Against — None

On —Stephen Pahl and Catherine Wright-Steele, Texas Department of Agriculture

DIGEST: HB 1494 would make many changes to the Texas Department of Agriculture's (TDA) regulatory authority and penalties, including:

- eliminating the requirement for the TDA to provide a hearing when the person charged with a violation did not request one;
- allowing the TDA to issue a cease-and-desist order immediately upon discovery of illegal activity, while providing an opportunity to appeal;
- allowing license periods to be set in rule;
- adjusting the licensing of service companies and service technicians and eliminating certain requirements;
- allowing the TDA to establish the notice requirements for Commodity Board Elections by rule;
- removing the requirement for public hearing before establishing an emergency quarantine; and
- allow the TDA to dispose, sell or transfer livestock export pens.

Hearings for administrative penalties. HB 1494 would require a defendant to ask for a hearing within 20 days of receiving notice of violation. If the person did not ask for a hearing a default judgment would be imposed.

A defendant ordered to pay a penalty would be required to pay within 30 days of receiving the notice of violation.

Cease-and-desist order. The bill would allow the TDA to order the immediate stop of illegal activity by an unlicensed person engaging in an activity that required a license. The cease-and-desist order would take effect immediately and allow the subject of the order an opportunity to appeal.

A violation of an order would be grounds for imposing administrative and civil penalties with a civil penalty of $50 to $2,000 for each violation. Each day a violation occurred or continued could be considered a separate violation.

If a person violated or threatened to violate the cease-and-desist order, the TDA could bring civil action in district court for injunctive relief to restrain the person from continuing the violation and/or civil penalty.

HB 1494 would make violating a cease-and-desist order a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) or, if the person had prior convictions, a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

Term and renewal of licenses and registrations. HB 1494 would allow the TDA to evaluate and propose adjustments to certain license and registration periods and the frequency of fees using the rulemaking process. It also would allow the TDA to send renewal notices by e-mail or mail, according to the records provided by the licensee.

Regulation of weights and measures. HB 1494 would define a “commercial weighing and measuring device" as a weighing and measuring device used in a commercial transaction. It would remove provisions providing that a barrel consisted of 31-1/2 gallons and that a hogshead consisted of two barrels. It would also establish that, for purposes of the retail sale of motor fuel only, a liquid gallon contained 231 cubic inches without adjustment based on the temperature of the liquid.

HB 1494 also would adjust the regulation of weights and measures, including requiring that a commercial weighing or measuring device be registered and periodically tested for correctness, allowing the TDA to

accept use of test standards of weights and measures by a National Institute of Standards and Technology certified laboratory, and providing licensing requirements for service technicians and service companies. Various penalties would be adjusted.

HB 1494 would change the civil penalty for a violation of weights and measures standards from a cap of $500 to a range of $250 to $10,000. The TDA and the attorney general could recover reasonable expenses incurred in obtaining related injunctive relief and civil penalties.

The bill would make certain offenses a violation of provisions relating to weights and measures rather than a class C misdemeanor (maximum fine of $500), including offenses relating to standard net weight or count set by rule; sale of commodities by proper measure; sale of milk or cream in a nonstandard container; sale of cheese, meat, or meat food product by nonstandard weight; misrepresentation of price or quantity; false representation of commodity quantity; and sale of a commodity in violation of certain provisions.

The bill would increase the penalty from a class C misdemeanor (maximum fine of $500) to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) for offenses relating to the sale of commodities by net weight, standard fill and quantity labeling for commodities in package form, use of an incorrect weighing or measuring device, and testing of a package by the TDA. If previously convicted, the penalty would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). The offense relating to the use of an incorrect weighing or measuring device would apply only if it were done knowingly.

Stop-sale orders. The TDA could issue and enforce a written or printed order to stop the sale of a commodity or service if there was reason to believe that the commodity was being sold or kept, offered, or exposed for sale in violation of weights and measures standards or through the use of a weighing or measuring device that was in violation.

Testing of commercial weighing and measuring devices for correctness. Unless exempt by rule, a commercial weighing or measuring device would be inspected and tested for correctness by the TDA at least once every four years or more often as required by the TDA.

The bill would authorize, rather than require, the TDA to collect a fee for each test of a weighing or measuring device. The bill would repeal a provision allowing the TDA to collect prescribed fees for TDA inspection only once annually unless requested to perform additional tests by the owner of a weight or measure.

The penalty for knowingly selling an incorrect weighing or measuring device, or disposing of a condemned weighing or measuring device would be a class C misdemeanor (maximum fine of $500). If previously convicted, the penalty would increase to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

The penalty for refusing to allow a test of a weighing or measuring device or for hindering TDA personnel would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) or a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if previously convicted. Neglecting to allow a test of a weighing or measuring device would no longer be an offense.

HB 1494 would remove the class C misdemeanor offense (maximum fine of $500) for failure or refusal to comply with tolerances and specifications for commercial weighing or measuring devices.

Registering a commercial weighing or measuring device. Unless exempt by rule, a commercial weighing or measuring device would have to be registered with the TDA before use. The bill would provide application requirements and specifies that registration would be valid for one year unless a different period was established by TDA rule. Removal of a registration tag would be a class C misdemeanor (maximum fine of $500) or a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if previously convicted.

If the TDA had reason to believe that an unregistered weighing and measuring device was being used for a commercial transaction, the TDA could inspect the device and the records to determine whether the device was in compliance.

Certified laboratory test standards of weights and measures. HB 1494 would allow the TDA to accept use of test standards of weights and measures by a National Institute of Standards and Technology-certified laboratory. The TDA could adopt rules to regulate the frequency and place

of inspection and correction of the standards used by an individual or business licensed by the TDA to perform certain device maintenance activities. The TDA could inspect any standard used by an individual or business licensed by the TDA to perform such activities if the TDA had reason to believe a standard was no longer compliant.

Licensing of service technicians and service companies. The bill would specify actions that constituted device maintenance activities and the powers and duties of the TDA regarding compliance verification and would provide exemptions from the licensing requirements.

Unless exempt, a service technician could not perform device maintenance activities unless licensed by the TDA. A service company could not hire a person that did not hold a service company license. An individual, acting as sole proprietor could not perform or offer to perform device maintenance activities unless they held a service technician license and a service company license. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to violate these license requirements or to cause another person to violate the requirements. The penalty would increase to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if previously convicted.

HB 1494 would provide application requirements, service technician license requirements, and service company license requirements. While a service company performed device maintenance activities, it would be required to maintain a current effective operations liability insurance policy in an amount set by the TDA and based on the type of licensed activities to be performed.

The bill sets out provisions relating to the term of a license, license renewal, and authorized practices by a license holder. The bill would grant rulemaking authority to the TDA regarding the licensing of service technicians and service companies and would require the TDA to adopt rules by December 1, 2013. The TDA would be required to begin accepting applications for and issuing service technician licenses and service company licenses by January 1, 2014.

Repealers. HB 1494 would repeal provisions relating to a service person registration requirement and, effective March 1, 2014, provisions governing the inspection and testing of liquefied petroleum gas meters, inspection and testing of ranch scales, and licensed inspectors of weighing

and measuring devices.

Notice of commodity producers board elections. The TDA would be allowed to prescribe the manner for providing notice for Commodity Board Elections by rule rather than requiring notice to be published in regional newspapers.

Plant pest quarantines. HB 1494 would repeal Agriculture Code, sec. 71.006, requiring a public hearing to determine if a pest or disease was a menace to a valuable plant or plant product before quarantining an area.

Disposition of livestock export facilities. HB 1494 would allow the TDA to dispose of its livestock export facilities.

Effective date. This bill would take effect September 1, 2013.

SUPPORTERS SAY:

Last session the Texas Department of Agriculture (TDA) regulatory programs were shifted to full cost recovery models. The agency implemented a variety of changes to maintain services with minimal or no fee increases. HB 1494 would make additional adjustments to maximize efficiencies and modernize outdated statutes, including eliminating obsolete licensing categories to reduce confusion for licensees.

Hearings for administrative penalties. Currently, if a defendant ignores a TDA notice of violation and does not affirmatively challenge allegations, the TDA must hold a trial. This oftentimes results in a waste of agency resources because defendants do not show up to about 40 percent of these TDA hearings. A no-show results in a default judgment against the defendant. HB 1494 would allow the TDA to enter a default judgment if a defendant failed to request a hearing by a specified deadline. This would save the agency time and resources that could be redirected to address caseload backlog. This process would track the civil process for failure to answer a lawsuit and would be similar to the system already used by Texas Department of Licensing and Regulation, the state's primary occupational licensing agency.

Cease-and-desist order. HB 1494 would improve consumer protection by allowing the TDA to order the immediate cessation of illegal activity while providing the subject of the order an opportunity to appeal. Currently a cease-and-desist order does not take effect until after a hearing is held. The bill would amend the cease-and-desist order system to go

from a hearing-first to a hearing-second scheme so that the order took effect immediately but could be challenged after the fact.

This provision of the bill is neither unique nor unprecedented as it was modeled after a similar enhancement for violations in Chapter 76 of the Agriculture Code.

Term and renewal of licenses and registrations. Currently, some license periods are set in rule and others in statute. HB 1494 would streamline the TDA's license authority and increase efficiency and save money by allowing the TDA the flexibility to evaluate each license period and propose adjustments using the rulemaking process.

No license period changes are anticipated currently, but this authority would allow the TDA to be responsive if efficiency was identified and supported through the public rulemaking process. This would allow the TDA to redirect resources and improve customer service when necessary.

The TDA would also be allowed to send renewal notices by e-mail or mail, saving printing and postage for licensees who prefer to get notice by e-mail.

Regulation of weights and measures. HB 1494 would make many stakeholder-approved updates to the Weights and Measures Code that would improve consistency and clarity. The bill also would better align the administrative and criminal offenses, including increasing certain penalties.

Current penalties for violating weights and measures standards are not enough of a deterrent for those committing an illegal activity, such as knowingly selling or using an incorrect weighing and measuring device. The current penalty for many violations is a fine, which could be viewed by repeat offenders as just the cost of doing business, whereas jail time would be an actual punishment and more likely serve as a deterrent.

Notice of commodity producers board elections. Current statute calls for extensive and repeated publication in regional newspapers when providing notice of commodity producers' board elections. The costs significantly outweigh the effectiveness of newspaper publications when compared with more modern methods of notification. HB 1494 would allow the TDA to prescribe the manner for providing notice for

Commodity Board Elections by rule, rather than requiring notice to be published in regional newspapers. The Texas Department of Transportation has similar authority.

Plant pest quarantines. Currently, before an emergency quarantine may be established, the TDA holds a hearing to investigate the pest or disease and determine if the pest or disease is a menace to a valuable plant or plant product. This hearing is procedural at that point because the TDA would have already been working extensively with public and private partners on the issue. HB 1494 would streamline the process to establish an emergency quarantine by removing the requirement for an unnecessary hearing that could delay the response time.

Streamlining the process for the state to establish quarantine is important because if the state fails to establish the quarantine quickly enough, the U.S. Department of Agriculture is authorized to quarantine the entire state, placing excessive economic burden on agricultural commerce.

There is ample opportunity for transparency and public input throughout the process of establishing a quarantine, so removing the requirement to have a public hearing before establishing a quarantine would not compromise the opportunity for producers and industry to be involved and informed. The process by which the TDA publishes notice of a permanent quarantine in the Texas Register to allow for public comment would remain. Also, the TDA can hold public hearings as deemed necessary and is required to hold a public hearing if a group of 25 or more people request a hearing.

Disposition of livestock export facilities. While the TDA has the authority to build and maintain livestock export facilities, it lacks clear authority to dispose, sell or transfer pens, sheds, and other facilities upon expiration or termination of the ground leases or when the facility has reached the end of its useful life. HB 1494 would allow the TDA to dispose of these livestock export facilities.

OPPONENTS SAY:

The current penalties imposed by the TDA are adequate. HB 1494 would increase penalties for many second offenses from a class C misdemeanor (maximum fine of $500) to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). Enhancing those penalties would be a big leap, involving potential jail time, which may not be an appropriate use of government resources for these types of nonviolent offenses.

NOTES: The identical Senate companion bill, SB 1433 by Hinojosa, was left pending in the Senate Committee on Agriculture, Rural Affairs and Homeland Security on April 22.

SUBJECT: Creating court fees and costs to fund statewide e-filing in the civil courts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — Gary Fitzsimmons, Dallas County District Clerk; (*Registered, but did not testify:* George Allen, Texas Apartment Association; Jason Byrd Texas Trial Lawyers Association; Randall Chapman, Texas Legal Services Center; Mike Hull, Texans for Lawsuit Reform; Jim Jackson and Craig Pardue, Dallas County; Lisa Kaufman, Texas Civil Justice League; Steve Perry, Chevron USA; Kaci Sohrt, Travis County District Clerks Office; Rick Thompson; Texas Association of Counties)

Against — None

On — John Dahill, Texas Conference of Urban Counties; Wallace B. Jefferson, Supreme Court of Texas; David Slayton, Office of Court Administration

DIGEST: CSHB 2302 would establish filing fees to pay for a new, statewide electronic case filing system.

Fee for electronic filing system fund. CSHB 2302 would direct the Supreme Court, appeals courts, district courts, county courts, statutory county courts, and statutory probate courts to collect a $20 fee on the filing of a civil action. Justice courts would collect a $10 fee on the filing of a civil action.

The bill would also require a person to pay a $5 court cost upon criminal conviction in a district, county, or statutory county court.

The comptroller could audit the records of a county related to the collection of these fees and costs and would deposit remitted fees and costs into the statewide electronic filing system fund established by the bill.

Statewide electronic filing system fund. CSHB 2302 would establish the statewide electronic filing system fund. Money from the fund would be appropriated to the Office of Court Administration (OCA) to:

- support a statewide electronic filing technology project for Texas courts;
- provide grants to counties to implement components of a project; or
- support court technology projects that had a statewide impact.

The bill would define "electronic filing system" to mean the filing system established by Supreme Court rule or order for the electronic filing of documents in this state. It would define "electronic filing transaction" as the simultaneous electronic filing of one or more documents related to a proceeding before a court in Texas.

A local government or appellate court that used the electronic filing system could charge a $2 fee for each electronic filing transaction if:

- the fee was necessary to recover the actual system operating costs incurred to accept electronic payment methods or interface with other technology information systems;
- the fee did not include an amount to recover employee costs, other than costs for directly maintaining the system;
- the governing body of the local government or appellate court approved the fee using their standard approval process; and
- the local government or appellate court annually certified to OCA that the amount of the fee was necessary to recover the actual system operating costs incurred by the local government or appellate court.

A local government or appellate court would be allowed to use electronic payment methods to collect this fee. A governmental entity that was not otherwise required to pay a filing fee would not be required to pay this fee. A court would be required to waive the fee for an indigent individual. The comptroller would be able to audit the collection and remittance of this fee, which would expire September 1, 2019.

Report. The bill would require OCA to file a report with the lieutenant governor, speaker of the House, and the chairs of the Senate Jurisprudence and House Judiciary and Civil Jurisprudence committees detailing the

number of local governments and appellate courts collecting this fee and the necessity of appellate courts to continue collecting it. The report would be due by December 1, 2018.

The bill would take effect September 1, 2013, and would apply only to a fee incurred on or after that date.

SUPPORTERS SAY:

CSHB 2302 would be an integral component for establishing an effective statewide e-filing system. Beginning in 2003, Texas courts began piecemeal e-filing. In December 2012, the Texas Supreme Court issued an order mandating e-filing for the vast majority of civil courts in Texas. Once fully implemented, e-filing would increase efficiency and transparency across the judicial branch. It would save countless hours currently spent dealing with paper, including stamping, stapling, tracking, delivering, archiving, shredding, and searching through file cabinets.

CSHB 2302 would allow the judiciary to pay for the statewide transition to e-filing. Under current law, e-filing is done on a per-document, "toll-road" model. Each time an attorney files a document related to a civil action, a fee is charged. This fee currently is determined by vendors. The bill would do away with this system by imposing a single set of fees to be collected across Texas for the benefit of the entire state.

The fees and costs implemented by CSHB 2302 would not price litigants out of filing civil actions. Many litigants would pay less to file all of their documents under the bill than they do under the status quo. This is because the various fees set by current vendors often represent a higher final cost than would the set of fees and costs proposed by the bill. Further, the bill would allow courts to exempt indigents from paying most of the filing fees and would require the exemption of indigents from paying the $2 fee that local governments and appellate courts would be allowed to charge. This would protect access of the truly poor to the courts.

It would be appropriate to increase costs and fees on those who use the court system because they directly benefit from the courts' time and resources. It costs money to run the courts, and filing fees are an appropriate and established way of paying for them. Further, these litigants would save money under the bill — e-filing would save them postage, printing, and other costs.

OPPONENTS

CSHB 2302 would continue the steady increase of fees piled onto civil

SAY:

litigants. Eventually, these fees will rise to point where civil justice is unavailable to the public.

Further, the bill would extend the dangerous policy of paying for the court system in Texas with fees and costs. It is inappropriate to fund the courts on a "user pays" system because all of society benefits from the rule of law in Texas that our courts both provide and safeguard.

NOTES:

According to the fiscal note, the fees established by CSHB 2302 would raise $17.7 million per fiscal year in general revenue dedicated funds for the statewide electronic filing system fund, all of which would be spent to support e-filing initiatives in the courts.

CSHB 2302 differs from the bill as filed in that it would:

- increase the court filing fees in Section 1 to $20 rather than $15 and to $10 rather than $5;
- allow courts to charge a $2 court filing fee and require the OCA to file a report with state leaders on this measure; and
- authorize the comptroller to audit the collection of fees.

The companion bill, SB 1146 by West, was reported favorably as substituted from the Senate Jurisprudence Committee on April 3 and recommended for the local and uncontested calendar.

SUBJECT: Establishing a mental health program for veterans

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 8 ayes — Menéndez, R. Sheffield, Collier, Farias, Frank, Miller, Moody, Zedler

1 nay — Schaefer

0 absent

WITNESSES: For — Jarod Myers, Bluebonnet Trails Community Health Center; Waymon Stewart, Andrews Center Behavioral Healthcare System; (*Registered, but did not testify:* Melody Chatelle, United Ways of Texas; Gilbert Gonzalez, CHCS; Greg Hansch, National Alliance on Mental Illness Texas; Donald Lee, Texas Conference of Urban Counties; Katharine Ligon, Center for Public Policy Priorities; Joe Lovelace, Texas Council of Community Centers; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County; John Stuart, National Association of Social Workers, Texas Chapter; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Kathy Wood, Texas Veterans Commission; (*Registered, but did not testify:* Sam Shore, Department of State Health Services)

BACKGROUND: Health and Safety Code, sec. 1001.076 governs a mental health program for veterans who were honorably discharged from military service. The program includes an initiative through which veteran volunteers, in conjunction with licensed therapists, receive training and provide peer-to-peer counseling services for veterans, service members, and their families.

DIGEST: HB 2392 would require the Department of State Health Services (DSHS) to implement a mental health program for veterans honorably discharged from any branch of military service. The bill would repeal Health and Safety Code, sec. 1001.076, which governs the current mental health program for veterans.

The program under HB 2392 would have to include peer-to-peer

counseling, access to licensed mental health professionals for volunteer coordinators and peers, and specialized training and technical assistance. It also would provide for:

- the recruitment, retention, and screening of community-based therapists;
- suicide prevention training for volunteer coordinators and peers; and
- veteran jail diversion services, including veterans courts.

HB 2392 would require DSHS to establish grants to be awarded to regional and local organizations that would provide services for the program. Grants for the program under the bill could not be used to supplant existing funding associated with DSHS programs. A grant awarded through the program would have to:

- emphasize direct services to veterans provided by peers;
- leverage additional local resources to provide funding for programs or services for veterans; and
- increase the capacity of the mental health program for veterans.

DSHS would be required to submit to the governor and the Legislature an annual report each December 1 that included:

- the number of veterans served by the mental health program;
- the number of peers and volunteer coordinators who received training;
- a summary of the grants and services awarded and an evaluation of those services; and
- recommendations for program improvements.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2392 would replace the state's current mental health program for veterans with one that was more effective. Through its emphasis on effective peer-to-peer counseling, the bill would attempt to address and ameliorate the alarming mental health issues that afflict too many veterans. In addition, by creating a valuable network of volunteers and mental health workers, HB 2392 would spread awareness about post-traumatic stress disorder and other mental health challenges that affect those who served our country.

HB 2392 would help increase the access veterans have to mental health care. Mental health cases for U.S. veterans have risen steadily in recent years, with about 1.3 million reported cases in 2012, according to the Department of Veterans Affairs (VA). The department recently reported that 22 veterans a day committed suicide during 2010 and that veterans seeking mental health care from the department wait an average of 50 days before receiving treatment. The program's chief component of peer-to-peer counseling would help veterans broach sensitive topics with one another. Such counseling is especially key for a group that values the shared experience of serving in the military.

The bill would create a useful network of volunteers and health care professionals to help serve the growing ranks of veterans, some of whom are struggling with the transition back to civilian life and could benefit from mental health services. It also would help rural communities and towns located far from VA clinics to offer mental health counseling to area veterans. These teams of peers would serve to spread awareness of mental health conditions common among veterans. They also would connect veterans with the proper mental health care venues in their communities.

Although DSHS already administers a veterans' mental health program, its scope is not well defined, nor does it provide the services that would be available under the program established by HB 2392.

OPPONENTS SAY:

HB 2392 unnecessarily would create a new, expanded veterans' mental health program when a similar program already exists. DSHS already offers a robust array of mental health services that includes an intervention program for veterans with a peer-to-peer counseling component.

NOTES:

The companion bill, SB 898 by Van de Putte, was passed by the Senate by a vote of 31-0 on April 15. It was reported favorably by the House Defense and Veterans' Affairs Committee on April 23.

SUBJECT: Reducing franchise tax percentage for rent-to-own stores

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritster

WITNESSES: For — Hugh Tollack, Rent-A-Center, Inc.; Alfredo Martinez; (*Registered, but did not testify:* Dwight Dumler, Rent-A-Center, Inc.; Stephanie Gibson, Texas Retailers Association; Mark Vane, Gardere Wynne Sewell)

Against — (*Registered, but did not testify:* Ted Melina Raab, Texas AFT)

On — (*Registered, but did not testify:* Teresa Bostick and Ed Warren, Comptroller of Public Accounts)

BACKGROUND: Business and Commerce Code, ch. 92, governs businesses engaged in rental-purchase agreements.

Tax Code sec. 171.002 authorizes a franchise tax of .5 percent for taxable entities primarily engaged in retail or wholesale trade. Otherwise, the rate of the franchise tax is 1 percent of taxable margin.

DIGEST: HB 317 would add to the definition of "retail trade" rental-purchase agreement activities regulated by Business and Commerce Code, ch. 92.

The bill would take effect January 1, 2014, and would apply only to a franchise tax report originally due on or after that date.

SUPPORTERS SAY: HB 317 would place rent-to-own businesses on an equal tax footing with retail businesses. The current non-retail classification of rent-to-own businesses creates an unfair playing field between businesses engaged in essentially the same enterprise.

The rent-to-own business model is fundamentally based on selling

products through a trial renting period. Rent-to-own businesses, such as Rent-A-Center, offer customers an option to rent a product before purchase. This allows customers to finance a purchase in installments — a good option for customers with limited or poor credit — and appeals to customers who are uncertain about a purchase and would like to try a product first.

Rent-to-own businesses are essentially no different than the retail sales enterprises with which they compete. The primary difference lies in how the customer pays for the products. Unfortunately, because the comptroller has classified rent-to-own businesses under a non-retail code in the 1987 Standard Industrial Classification Manual, they have to pay a higher franchise tax rate of 1 percent and cannot deduct cost of goods sold when calculating their taxable margin. These additional costs have a significant negative impact on these smaller-scale businesses, which are competing with large retail businesses that have a lighter franchise tax burden.

The fact that there are larger educational funding issues in the state is no reason to maintain an unfair tax classification. While the fiscal impact of HB 371 would be limited, its effect on the rent-to-own businesses that pay the higher tax would be substantial.

OPPONENTS SAY:

HB 371 would reduce taxes collected for public schools and local governments by about $5.4 million for fiscal 2014-15 and beyond. The bill would have an indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue coming into the state that is not absolutely necessary should be cast aside.

NOTES:

In the fiscal note for HB 317, the Legislative Budget Board estimates the bill would have a negative impact of $5.4 million for fiscal 2014-15 on the Property Tax Relief Fund. Any loss to the fund would have to be made up with an equivalent amount of general revenue to fund the Foundation

School Program.

The companion bill, SB 539 by Paxton, has been referred to the Senate Finance subcommittee on Fiscal Matters.

A related bill, HB 510 by Murphy, et al., would allow taxable entities in the business of renting or leasing commercial and industrial machinery and equipment to calculate franchise tax using a tax rate of .5 percent rather than 1 percent. The bill is pending in the House Ways and Means Committee.

SUBJECT: Regulating navigators in health benefit exchanges

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, C. Turner

1 nay — Taylor

1 absent — Sheets

WITNESSES: For — Greg Hansch, National Alliance on Mental Illness of Texas; Lee Loftis, Independent Insurance Agents of Texas; Bee Moorhead, Texas Impact; Stacey Pogue, Center for Public Policy Priorities; (*Registered, but did not testify:* Misty Baker, Independent Insurance Agents of Texas; Christine Bryan, Clarity Child Guidance Center; Jose Camacho, Texas Association of Community Health Centers; Jennifer Cawley, Texas Association of Life and Health Insurers; Melissa Davis, National Association of Social Workers - Texas Chapter; Kristine Donatello, American Cancer Society Cancer Action Network; Harry Holmes, Harris County Healthcare Alliance; Patricia Kolodzey, Texas Medical Association; Lee Manross, Texas Association of Health Underwriters; Simone Nichols-Segers, National Multiple Sclerosis Society; Des Taylor; Clayton Travis, Texans Care for Children)

Against — (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition)

On — Blake Hutson, Consumers Union; Jamie Walker, Texas Department of Insurance

BACKGROUND: Sec. 1311 of the Patient Protection and Affordable Care Act of 2010 (ACA) (42 U.S.C. §18031) establishes in each state a health benefit exchange, which is an online marketplace of private, government-regulated health insurance plans that are eligible for federal subsidies. The Health and Human Services Commission estimates that 40 percent of Texas' 6 million uninsured residents will be eligible to purchase subsidized insurance in Texas' federally operated exchange. Open enrollment in the exchange begins October 1, 2013, and its policies

become effective January 1, 2014.

Sec. 1311(i) of the ACA establishes in each exchange a program of navigators, organizations or individuals that receive federal grants to provide unbiased information to consumers about their coverage options in the exchanges and that facilitate their enrollment in qualified health plans. As directed by the ACA, the federal government is currently finalizing proposed qualification, accessibility, and conflict-of-interest standards for navigators.

DIGEST:

CSHB 459 would add Insurance Code, ch. 4154 to authorize various navigator activities, while prohibiting others, in Texas' health benefit exchange under the ACA. The bill also would authorize the Texas Department of Insurance (TDI) to regulate navigators if it determined that federal standards did not ensure they were qualified to perform their duties or avoid conflicts of interest.

Navigators. CSHB 459 would define "navigator" to include an individual or entity performing a navigator's duties as described in the ACA or any regulation enacted under the ACA. Navigators could provide information on public benefits and health coverage or other information consistent with the mission of the navigator.

The bill would allow navigators to act without obtaining a license from TDI or any other state agency. The bill would not apply to licensed life, accident, and health insurance agents or licensed life and health insurance counselors or companies.

Navigators would be prohibited from receiving compensation from a health benefit plan issuer or in any other manner prohibited by law.

The bill would prohibit navigators from engaging in any unfair method of competition or any deceptive or fraudulent trade practice. In advertising the navigator's duties and services, the bill would forbid a navigator from claiming professional superiority or from using words such as "advisor," "agent," "consultant," or any others in a deceptive or misleading manner.

CSHB 459 would prohibit navigators who were not licensed as agents from endorsing, selling, soliciting, or negotiating coverage under a health benefit plan. They could not advise consumers on which exchange health plan was preferable nor provide information or services about insurance

products not offered through an exchange and could not accept compensation that was wholly or partly dependent on whether a person enrolled in a health benefit plan.

TDI oversight. CSHB 459 would require the Texas Insurance Commissioner to determine whether the federal regulations established by the ACA sufficiently allowed navigators to

- assist consumers in completing the exchange's uniform application;
- explain how affordability programs such as exchange subsidies, Medicaid, and the children's health insurance program work;
- explain qualified health plan features;
- provide culturally and linguistically appropriate information;
- avoid conflicts of interest; and
- establish standards and processes relating to privacy and data security.

If the commissioner found the federal regulations insufficient, the commissioner would have to make a good faith effort to cooperate with the U.S. Department of Health and Human Services to propose improvements. To ensure navigators could perform their duties, the commissioner would establish standards and qualifications if, after a reasonable interval, the commissioner determined the federal standards remained insufficient.

At a minimum, standards established by rule would require that a navigator had not:

- had a professional license suspended or revoked;
- been the subject of any disciplinary action by a financial or insurance regulator; or
- been convicted of a felony.

CSHB 459 would require the commissioner to obtain at regular intervals a list of Texas' navigators and, for individuals, their associated organizations. The commissioner by rule could establish a state registration for navigators to allow TDI to collect this information and to ensure navigators satisfied the commissioner's standards.

To ensure compliance with any changes in state law, the commissioner could authorize additional training for navigators

The bill would take effect September 1, 2013, and Insurance Code, ch. 4154 would expire September 1, 2017.

SUPPORTERS SAY:

By clarifying the regulatory environment around the navigator program, CSHB 459 would protect consumers in health benefit exchanges while preserving the program's ability to expand access to health care. The bill would ensure navigators were qualified, properly trained, and impartial by establishing essential consumer protections regardless of the outcome of federal rulemaking. It also would authorize TDI to evaluate and, if necessary, enforce quality standards. These consumer safeguards would be especially necessary during the program's initial implementation.

CSHB 459 would preserve the navigators' crucial role in expanding health insurance access in Texas. The opening of health benefit exchanges in 2014 will enable hundreds of thousands — if not millions — of uninsured Texans to enroll in a health benefit plan. Eighty percent of the exchange's new enrollees will receive subsidized coverage due to their lower income levels, and overall this population will face increased barriers to understanding their new health insurance options. This bill would maintain the navigator program's capacity without duplicating federal requirements or impeding existing health care access programs.

TDI's new rulemaking authority would be a common sense extension of its current responsibilities. It would impose no increased costs, and would be the most efficient way to manage a new federal program. Although the federal standards for navigators will not be finalized for another week and a half, the publicly available proposed rules are not unduly burdensome. Providing TDI with oversight capacity would actually prevent any increase in federal encroachment.

OPPONENTS SAY:

CSHB 459 would be an unnecessary expansion of government. The bill would create a new program at the state level and empower TDI with broad new rulemaking authority. Assisting the navigator program would increase access to subsidized health benefit plans in the exchanges, further stressing the federal budget and causing more reliance on governmental programs. It also would set a precedent for future increases in the federal government's power to tax and regulate.

The bill would be a premature reaction to an evolving federal mandate. Because rulemaking for the navigator program is not yet complete,

authorizing this expansion could have unintended consequences in the future. Although there is no fiscal note, it is impossible to estimate the future financial costs of regulating navigators. Any statutory change now would likely require new regulation at a later date. It would be more prudent to legislate after certainty about the program is established.

NOTES:

A similar bill, SB 1795 by Watson, was passed by the Senate by a vote of 30-1 on April 22.

Comparison of original to substitute. While HB 459 as introduced and the committee substitute both concern the navigator program in Texas, the two versions have few specific provisions in common. HB 459 as introduced would have added Insurance Code, ch. 1509, governing the navigator program, and would have required TDI to:

- select entities qualified to serve as navigators under the ACA;
- certify navigators after the adoption of rules for that purpose; and
- set minimum standards for navigator training.

HB 459 as introduced also would have:

- prohibited navigators, with no exception for those licensed as agents, from selling, soliciting, or negotiating coverage under a health benefit plan; and
- prohibited navigators from receiving a commission from an insurer.

SUBJECT: Defense to prosecution for failing to use a child passenger safety seat

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett

1 nay — Riddle

1 absent — McClendon

WITNESSES: For — (*Registered, but did not testify:* Ellen Arnold, Texas PTA; Marshall Kenderdine, Texas Pediatric Society; Bryan Sperry, Children's Hospital Association of Texas)

Against — None

On — (*Registered, but did not testify:* Frank Luera, Department of State Health Services Safe Riders; Chris Nordloh, Texas Department of Public Safety)

BACKGROUND: Transportation Code, sec. 545.412, makes it a misdemeanor offense to transport a child younger than eight years old — unless the child is taller than four feet, nine inches — in a passenger vehicle without securing the child in a child passenger safety seat system that meets federal standards. The first offense is a misdemeanor punishable by a fine of up to $25. Second and subsequent offenses are punishable by a fine of up to $250.

Drivers are exempt from the offense if they were:

- operating a vehicle transporting passengers for hire, except for third-party transport service providers when transporting clients under a contract to provide nonemergency Medicaid transportation; or
- transporting a child in a vehicle in which all the seats with child passenger safety seat systems or safety belts were occupied.

It is a defense to prosecution under sec. 545.412 that:

- the person was operating the vehicle in an emergency or for a law enforcement purpose (§545.412(c)); or
- the person provided satisfactory evidence to the court that he or she possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system (§545.4121(b)).

DIGEST:

HB 1294 would eliminate the defense to prosecution for not securing a child in a safety seat under Transportation Code, sec. 545.412 if a driver could prove that he or she possessed a child passenger safety seat system.

The bill would add a defense to prosecution for a person who, at the time of the offense:

- had not been arrested or issued a citation for violation of any other offense; and
- did not already possess a child passenger seat in the vehicle but obtained a child passenger safety seat after the offense.

The bill would take effect September 1, 2013, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

HB 1294 would protect children's safety by encouraging drivers to have and use a child passenger safety seat when transporting a child younger than eight years old or not taller than four feet, nine inches.

Current law provides a defense to prosecution for those who own child passenger safety seats but are not using them, which does nothing to ensure children's safety. By changing the defense to prosecution to allow people to get and use a child passenger safety seat if they did not already have one, HB 1294 would help increase awareness of the law and inform drivers of the dangers of not using a safety seat without unnecessarily punishing those who want to follow the law. Changing the defense to prosecution would help ensure that drivers obtained and used the new child safety seat in the future by removing the current defense to prosecution that allows drivers to dismiss a ticket, even on subsequent offenses, for owning but not using the seat.

Adult seat belts are dangerous for children shorter than four feet, nine inches. When a child is not yet that tall, the adult lap belt and shoulder strap cannot be fitted properly across the child unless he or she has been

properly placed in a booster seat or car seat. Children younger than eight years old or not taller than four feet, nine inches who are restrained only by a seatbelt are susceptible in the event of a car accident to severe damage to their internal organs, paralysis, and death.

HB 1294 would improve child vehicle safety without imposing a financial burden on families. Child safety seats and booster seats are inexpensive, even for low-income families, with the cost of booster seats ranging from $15 to $40 on average. The Department of State Health Services and state nonprofits administer programs that provide free child passenger safety seats to low-income families who cannot afford one.

The cost of a car seat is minimal when compared to the potential cost of not properly securing a child. Placing young children in car seats saves the state and families thousands of dollars in potential personal injury, public medical expense costs, and work losses, and most important, protects the health of the child.

OPPONENTS SAY:

While the child safety passenger seat law is well intentioned, HB 1294 would stiffen the requirements for repeat violators of a law that already represents an unwarranted intrusion by the government into decisions that are best left to the judgment of parents. Parents should have the freedom to determine what is best for their children with regard to riding in a car safety seat.

OTHER OPPONENTS SAY:

Rather than tinkering with defenses to prosecution that still render this important law toothless, the Legislature should require that the state's child safety passenger seat law be observed by drivers and enforced by authorities. Child safety seats cannot protect the lives and health of children if they are not installed and used.

SUBJECT: Administering, authorizing psychoactive medications to DADS clients

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield

0 nays

2 absent — Coleman, Zedler

WITNESSES: For — Beth Mitchell, Disability Rights Texas; Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify*: Katherine Barillas, One Voice Texas; Chase Bearden, Coalition of Texans with Disabilities; Leah Gonzalez, The National Association of Social Workers Texas Chapter; Harry Holmes, One Voice Texas; Ginger Mayeaux, The Arc of Texas; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Nina Jo Muse, DSHS; Scott Schalchlin, DADS

BACKGROUND: The Texas Department of Aging and Disability Services (DADS) administers long-term services and supports for individuals with intellectual and physical disabilities. Health and Safety Code, sec. 591.003, defines "client" as a person receiving mental retardation services from the department or a community center.

Health and Safety Code, ch. 592, governs the rights of individuals with mental retardation (now commonly referred to as intellectual or developmental disabilities). Sec. 592.038 states that each client has the right to not receive unnecessary or excessive medication and prohibits medication from being used for certain purposes. Sec. 592.054(b) requires directors and superintendents of state facilities to gain consent for all surgical procedures.

DIGEST: CSHB 1739 would establish provisions regarding the right to refuse psychoactive medications, create informed consent procedures, and establish due process medication hearings for clients receiving residential

care services from DADS.

Right to refuse. HB 1739 would give clients receiving voluntary or involuntary residential care services the right to refuse psychoactive medications. For clients committed to the residential care facility, the residential care facility could seek court authorization for the medication, despite the refusal.

If a client refused a psychoactive medication, the bill would prohibit the administration of the medication unless:

- the client was having a medication-related emergency;
- an authorized consenter had given permission;
- a court authorized the medication after a hearing; or
- the medication was authorized by an order under the Code of Criminal Procedure.

Consent. The bill would establish requirements for administering psychoactive medications to clients receiving residential care services. It would require a superintendent or director to gain consent for the administration of all psychoactive medications unless the client fell under one of the exceptions.

Consent for a psychoactive medication would need to be given voluntarily and without coercive or undue influence by the client or his or her authorized consenter. The treating physician (or designee) would have to provide specific information about the condition, medication, potential beneficial effects, side effects, risks, and possible alternatives to the medication.

The consent would have to be recorded on a form provided by the residential care facility. It could also be recorded with a statement by the physician (or designee) documenting that consent was given by an authorized individual and the circumstances under which consent was obtained. If the treating physician designated another person to document the consent, the physician would be required to meet with the client or authorized consenter within two business days to review the information and answer any questions.

If a client refused or attempted to refuse a psychoactive medication — either verbally or by other means — it would have to be documented in

the client's clinical record.

Administering psychoactive medications. When prescribing a psychoactive medication, the bill would require a physician to prescribe an effective medication with the fewest side effects or the least potential for adverse side effects and to administer the smallest possible dosage for the client's condition.

If a psychoactive medication was administered without consent because a client was having a medication-related emergency, the physician would have to document the necessity with specific medical or behavioral terms and that the physician evaluated, but rejected, less intrusive forms of treatment. The treatment with psychoactive medication would need to be provided in the manner least restrictive of the client's personal liberty.

Application for a court order. A physician could seek court authorization to administer a psychoactive medication if the physician believed the client lacked the capacity to make a medication decision, determined the medication was the proper course of treatment, and the client had been committed to a residential care facility (or a commitment application had been filed). The application for court-ordered medication would need to explain why the physician believed the client lacked the capacity to make a medication decision, the physician's diagnosis, and specific information about the medications, among other things.

Although an application for court-ordered medication would have to be filed separately from a commitment application, the hearings could be held on the same day. The bill also would establish when a hearing would have to be held, when an extension could be granted, and when a case could be transferred to a different county.

A client for whom a medication application had been filed would be entitled to notice about the hearing, representation by an attorney, independent review by an expert, and notification about the court's determination of the client's capacity and best interest.

Court order. To order a psychoactive medication, the court would need clear and convincing evidence that the client lacked the capacity to make a medication decision and the medication was in the client's best interest. After a hearing, the client and attorney would be entitled to written notification of the court's determinations, reasons for the decision, and a

statement of the evidence. When determining if the medication was in the client's best interest, the court would need to consider a number of factors, including the client's expressed preferences, religious beliefs, the medication's risks and benefits, and any less intrusive treatments.

A court order also could be issued for client awaiting a criminal trial, if the client was committed to a residential treatment facility within six months of the medication hearing. If the client was criminally committed to a residential treatment facility or was confined in a correctional facility, a court could authorize a medication if, by clear and convincing evidence, the court determined the medication was in the client's best interest and the client was dangerous to the client or to others. When determining if a client presented a danger, the court would need to assess the client's current mental state and whether the client had made serious threats of physical harm.

A medication hearing would be conducted by a probate judge, but the hearing could be transferred to a magistrate or associate judge with psychoactive medication training. The bill would establish procedures for appealing a magistrate or associate judge's decision and transferring a case to judge also licensed as an attorney.

Effect of a court order. A court order would allow the administration of a psychoactive medication to a client, even if the client refused. Conversely, a client with a court order would not be able to consent to a psychoactive medication, but the order would not be a determination of mental incompetency or limit a client's rights. A court order would permit dosage changes, stopping or restarting a medication, and substitutions within the same medication class, as determined by DADS. If a client was confined to a correctional facility, the order would authorize any appropriate pre-transfer mental health treatment, but would not authorize retaining the client for competency restoration treatment.

A party could petition for reauthorization or modification (change of medication class) of a court order. A client also could appeal an order. All orders would remain in effect until a court made a final decision on the petition or appeal. An order would expire a year from the date it was issued, unless it was issued for a client awaiting a criminal trial. In that case, it would be reviewed every six months and expire when there was a final decision in the case.

Additional hearings. If a client found incompetent to stand trial did not meet the criteria for court-ordered psychoactive medication under this bill, HB 1739 would allow a state attorney to file a motion to compel medication under the Code of Criminal Procedure.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1739 would amend current law by defining how clients receiving residential care services, including residents of state-supported living centers (SSLCs), could be given psychoactive medications. There are currently no statutes outlining the requirements for administering these powerful medications to this population. The bill would help residential care facilities and protect clients by ensuring informed consent and due process, improving the continuity of care, and promoting uniformity within current law.

Right to refuse and informed consent. HB 1739 would protect clients receiving residential care services by ensuring that clients and authorized consenters were adequately informed about their medical care and codifying the right to refuse psychoactive medications.

Due process. The U.S. Supreme Court has ruled that a person has a constitutional right to refuse psychoactive medications. This refusal can be overridden only if the person is confined (or committed) and there is a due process hearing. By formalizing the right to refuse psychoactive medications and establishing procedures by which a facility could seek a court order, HB 1739 would establish important due process procedures for clients committed to residential care facilities.

Continuity of care. Due to an injunction, an SSLC cannot administer a psychoactive medication if a client refuses, even if the physician believes the treatment is in the client's best interest. As a result, an SSLC must transfer a client to a state hospital, which has procedures for due process medication hearings. These transfers are stressful and disruptive for clients, while placing additional burdens on state hospitals. By establishing due process hearing procedures for residential care facilities, this bill would eliminate the need for these transfers. This would improve the quality and continuity of care for clients, while streamlining the medication process for both SSLCs and state hospitals.

Uniformity. The bill would promote uniformity by mirroring

requirements in the Mental Health Code and the Nursing Home Act. Similar procedures for residents of state hospitals and nursing homes have existed for many years. This bill would allow clients receiving residential care services to enjoy the same due process rights and protections as other populations.

OPPONENTS SAY:

By increasing informed consent requirements, HB 1739 could place additional administrative burdens on doctors. Similarly, new due process procedures could increase probate court caseloads. It is unclear how many individuals would be affected by this bill, so it is difficult to determine the extent of the impact on doctors and courts.

NOTES:

The identical companion bill, SB 34 by Zaffirini, was passed by the Senate by a vote of 31-0 on April 17.

SUBJECT: Private and home-school students' access to summer public school classes

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: For — *(Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference, Roman Catholic Bishops of Texas; Janna Lilly, Texas Council of Administrators of Special Education)

Against — None

On — *(Registered, but did not testify:* David Anderson and Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND: Education Code, sec. 25.001(a) states a person who is five to 21 years old on September 1 of any school year, or 21 to less than 26 years of age and is admitted by a school district to complete a high school diploma, is entitled to the benefits of the Available School Fund for that year.

DIGEST: HB 2137 would require school districts to allow eligible students not enrolled in a school district to participate in district summer school courses. The students would have to meet course eligibility requirements and pay any fees associated with the course approved by an independent school district's board of trustees.

The school district would not be required to allow students who are not enrolled in the district to enroll in an intensive mathematics, science, or summer program for students at risk of dropping out.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 2137 simply would recognize the legitimate right of private and

home-schooled students living in a school district to enroll in summer programs in their districts. Many private schools are unable to offer the same programs that public schools offer in the summer and, as taxpayers, these families and students should have the same access to these summer programs as do students attending a public school.

Currently, school districts have the discretion to limit summer school program admittance to only students who are enrolled in the district during the regular school year. As a result, some districts have rejected students for summer school who were not enrolled in the district during the school year. Many of these students are the most in need of additional instruction and public summer programs are the only way for them to obtain it. While it may require districts to accommodate additional students, these students would have to pay the same tuition and fees and meet the same application criteria as a district student.

The bill would not require a school district to enroll these students in certain programs that would not be appropriate for them, such as programs designed for students at risk of dropping out of a public school or who are underperforming in math or science. HB 2137 simply would ensure that private and home-schooled students were afforded the opportunities to which they are entitled and get the continuing summer instruction they need.

OPPONENTS SAY:

HB 2137 would financially and administratively burden school districts with what could be a large number of summer school students who are not enrolled during the regular school year. Many summer school programs are offered at a discount to students because they are an academic necessity, and increasing the number of summer school students would mean an even greater cost for school districts.

SUBJECT: Vesting the Gonzales County attorney with the duties of a district attorney

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — David Bird and Paul Watkins, Gonzales County; Heather McMinn, 25th Judicial District; (*Registered, but did not testify:* Micah Harmon and Tramer Woytek, Lavaca County)

Against — None

On — John Stuart Fryer, Lavaca County; Robert Kepple, District and County Attorneys Association; (*Registered, but did not testify:* Micah Harmon and Tramer Woytek, Lavaca County)

BACKGROUND: Government Code, sec. 43.112 established the 25th Judicial District. Its elected felony prosecutor has jurisdiction in Gonzales, Guadalupe, and Lavaca counties.

The Professional Prosecutors Act, Government Code, ch. 46 ties the salary of elected prosecutors covered by the act to the salary of a Texas district judge, which is $125,000. To receive the higher salary, an elected prosecutor must give up his or her private civil practice.

DIGEST: HB 696 would remove Gonzales County from the 25th Judicial District and grant its county attorney the duties and powers of a district attorney. The Gonzales County attorney would be added to the Professional Prosecutors Act, raising his or her annual salary to $125,000.

SUPPORTERS SAY: HB 696 would increase the efficiency of law enforcement in Gonzales County. The 25th Judicial District has seen a sharp rise in population and economic activity related to the development of oil and gas deposits in the Eagle Ford shale formation across South Texas. This has led to an increase in crime.

By vesting the Gonzales County attorney with the powers and responsibilities of a district attorney, HB 696 would centralize law enforcement activities in Gonzales County. The county attorney is located in the county seat, Gonzales, as is the county sheriff and the district clerk. The district attorney of the 25th Judicial District offices in Seguin, the county seat of Guadalupe County. The map of the 25th Judicial District shows it can take up to three hours for a district attorney to drive from one part of the district to another.

There is precedent for granting the county attorney the same duties as a district attorney. Gonzales County would be among 27 other counties in which a county attorney has been granted the authority to perform the duties of a district attorney.

The Legislature historically has added felony prosecutor offices to the Professional Prosecutors Act when the prosecutor has requested it. The exception was when the 82nd Legislature did not move two prosecutors into the act because of a lack of funding for spending increases. Since the state has seen a dramatic increase in revenue, the state can afford to add the Gonzales County Attorney's Office to the Professional Prosecutors Act, especially with the corresponding benefits to law and order. Finally, there are counties with smaller felony dockets that have prosecutors under the professional prosecutor's act.

OPPONENTS SAY:

The Legislature should be careful about making long-term funding commitments when it comes to criminal justice matters that may have only a local impact. According to the fiscal note, the bill would cost the state $184,334 in general revenue and $124,262 from the judicial fund through the biennium.

NOTES:

The committee substitute differs from the bill as filed in that the original would have vested the Lavaca county attorney with the powers and duties of a district attorney.

SUBJECT: Pledges of allegiance to the U.S. and Texas flags in charter schools

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: For — Kyle Borel and Gina Gregory, Harmony Public Schools; Ann Stevenson, Uplift Education; (*Registered, but did not testify:* Matthew Abbott, Wayside Schools; Michelle Bonton and Angeil Washington, The Rhodes School; Ramazan Coskuner, Harmony Public Schools; Mark DiBella, YES Prep Public Schools; Monty Exter, Association of Texas Professional Educators; Gavino Fernandez Jr., LULAC 4861; Lindsay Gustafson, Texas Classroom Teachers Association; Natalie Leffall, The Rhodes School; Janna Lilly, Texas Council for Administrators of Special Education; Nelson Salinas, Texas Association of Business; Larkin Tackett, IDEA Public Schools; Adrianna Fernandez and three other individuals.)

Against — None

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: In 2003, the Legislature passed SB 83 by Wentworth, requiring that public schools have students each day recite the pledges of allegiance to the U.S. and Texas flags, followed by one minute of silence. During the one-minute period, a student may reflect, pray, meditate, or engage in any other silent activity that does not disrupt. On written request from a student's parents or guardian, a school district must excuse the student from reciting a pledge.

DIGEST: HB 773 would apply to the governing boards of open-enrollment charter schools the law for the boards of trustees of traditional public schools requiring that they have students each day recite the pledges of allegiance to the U.S. and Texas flags, followed by a minute of silence. The bill would require charter schools to excuse students from reciting a pledge of allegiance on written request from a student's parent or guardian.

HB 773 would apply starting with the 2013-2014 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 773 would align open-enrollment charter schools with traditional public schools by requiring students to say the pledge of allegiance to the U.S. and Texas flags and to participate in one minute of silence during each school day. Reciting the pledges is a time-honored school tradition that helps foster a spirit of citizenship. The minute of silence helps set a positive tone for the school day by giving students time to engage in prayer or reflection. Students who choose not to pray may engage in any silent activity that does not disrupt other students. Many charter schools already have incorporated the pledges and minute of silence into their daily schedule and all should be required to do so.

OPPONENTS SAY:

Charter schools were designed to be free of many of the rules and regulations that apply to traditional public schools and HB 773 is an example of "mandate creep." The decision to include the pledges and minute of silence should be up to each charter school governing board.

NOTES:

The Senate companion, SB 1362 by Schwertner, was reported favorably without amendment from the Senate Education Committee on April 4.

SUBJECT: Timely production of audit billing documents from those leasing state land

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Crownover, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

1 absent — Burnam

WITNESSES: For — (*Registered, but did not testify*: Rita Beving; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Karen Hadden, SEED Coalition; Adam Haynes, Chesapeake Energy; Clay McKelvy, Public Citizen; Tom Sellers, ConocoPhillips)

Against — none

On — Mari Ruckel, Texas Oil and Gas Association; Bill Stevens, Texas Alliance of Energy Producers; Dale Sump, General Land Office. (*Registered, but did not testify:* Mark Havens, General Land Office)

BACKGROUND: Natural Resources Code, sec. 52.135 gives the commissioner of the General Land Office, the attorney general, and the governor the authority to inspect and examine the books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of oil and gas from those leasing public land for oil and gas production.

DIGEST: CSHB 2571 would require lessees to produce within 60 days information or documents requested by the commissioner, attorney general, or governor.

If unable to provide the requested information within 60 days, the lessee would have to provide a written response within 30 days explaining why it was unable to do so. The requestor could then extend the deadline for receiving the information for 60 days or deny the request. If the requestor chose not to extend the deadline, the lessee would have five days after receiving notice to produce the information.

A lessee who chose to withhold requested information on a good faith legal basis would have to give the requestor a detailed explanation of the reason for withholding the information no later than 60 days after receiving the request.

The General Land Office commissioner could assess a penalty against a lessee who intentionally withheld information past the deadline. The maximum penalty would be $100 a day after the deadline to produce the information for the first 60 days and $1,000 a day for each day after. The commissioner could not assess a penalty for withholding information on a good faith legal basis until the commissioner determined that the requestor was entitled to the information.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSHB 2571 would give state regulators the authority to obtain in a timely manner information and documents the state is entitled to receive from people who lease state land for oil and gas production.

Responsible lessees would be able to produce in 60 days the sort of basic information that the General Land Office routinely requests in regard to an audit billing. There are numerous examples of unresponsiveness to information requests and a pattern of excuses for noncompliance from a few bad actors. This bill simply would provide reasonable deadlines and penalties for the production of records related to the production, sale, and marketing of oil and gas on publicly owned state lands. The deadlines would not cause undue harm to responsible companies that make up most of the state's land lessees.

Those concerned that the bill would place burdens on lessees should note that the bill would not give the GLO authority to request additional information, but only would provide a time frame for lessees to produce information that is already clearly spelled out in the Natural Resources Code. A provision in the committee substitute would allow lessees to request an extension if they could not meet a deadline.

OPPONENTS SAY:

CSHB 2571 would give the General Land Office too much authority and would leave lessees with little recourse to challenge requests that could be burdensome, time-consuming, and expensive.

The GLO could request a broad range of information from lessees. Depending on the information it requests, 60 days could be an insufficient amount of time. In some instances, the GLO has requested records going back decades. Researching documents can be an expensive process for companies, requiring many hours and thousands of dollars in legal fees. CSHB 2571 could end up giving the GLO authority to make onerous requests on lessees.

NOTES:

The committee substitute differs from the bill as filed by:

- requiring a lessee to state the reason for the "inability to provide the information in the time required," rather than the "unavailability of the information";
- requiring the information requestor to notify a lessee of a deadline extension in writing and explaining the lessee's obligation to provide the information if the extension request were rejected;
- requiring a lessee to provide an explanation within 60 days of an information request for withholding information on a good faith legal basis; and
- requiring the commissioner to determine that a lessee was intentionally withholding information to which the land office was legally entitled to assess a penalty.

SUBJECT: Requiring certain water service providers to maintain fire-flow standards

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: **(On original)**
For — Jack Hodges and James Morrison, Texas Rural Water Association; Scott Houston, Texas Municipal League; Brian Macmanus, East Rio Hondo Water Supply Corp.; Charles Profilet, Southwest Water Co.; *(Registered, but did not testify:* Janet Adams, Fort Davis Water Supply Corp.; David Garza, City of Pharr*)*

Against — *(Registered, but did not testify:* Charlie Schnabel, Manville Water Supply Corp.*)*

On — Tony Graf, Manville Water Supply Corp.; Isael Posadas; *(Registered, but did not testify:* Sherilyn Dahlberg, Sharyland Water Supply Corp; Elston Johnson, Texas Commission on Environmental Quality*)*

(On committee substitute)
For — Robert Laughman, Aqua America; Brian Macmanus, East Rio Hondo Water Supply Corp.; Charles Profilet, Southwest Water Co.; *(Registered, but did not testify:* Brandon Aghamalian, City of Pflugerville; Jerry Valdez, Texas Alliance of Water Providers; Lara Zent, Texas Rural Water Association*)*

Against — none

BACKGROUND: Fire flow is the water flow and pressure from a fire hydrant needed to successfully extinguish a fire.

Title 30 TAC, sec. 290.46 requires a public utility, in municipalities with a

population of 1 million or more to deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for at least two hours while maintaining a minimum pressure of 20 pounds per square inch (psi) throughout the distribution system during emergencies such as firefighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

The Health and Safety Code, sec. 341.0357(b) states that a fire hydrant is considered to be nonfunctioning if it pumps less than 250 gallons of water per minute.

DIGEST:

CSHB 1973 would authorize a city to impose fire-flow standards established by the Texas Commission on Environmental Quality (TCEQ) on an investor-owned utility (IOU) or water supply corporation (WSC) that was operating in a municipality or a municipality’s extraterritorial jurisdiction.

The TCEQ, by rule, would establish standards for adoption by a municipality that would be similar to what is laid out in the Texas Administrative Code for public utilities in municipalities with populations of 1 million or more. The standards would require IOUs and WSCs to deliver water to any fire hydrant connected to the provider's water system located in a residential area so that the flow at the fire hydrant was at least 250 gallons per minute for a minimum of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as firefighting. That flow would be in addition to the water provider's maximum daily demand for purposes other than firefighting.

IOUs and WSCs would be exempt from meeting the TCEQ standard if the municipality's own fire-flow standard was less than the TCEQ standard. If a municipality did not have fire-flow standards, the IOU and the WSC could not be required by the municipality to exceed the TCEQ standard.

An ordinance could not require an IOU or WSC to build, retrofit, or improve infrastructure in existence at the time the ordinance was adopted.

IOUs and WSCs would enter into written memorandums of understanding with municipalities to provide for the necessary testing of fire hydrants, and other issues relating to the use of the water and maintenance of the fire

hydrants.

Municipalities could report non-compliance to the TCEQ, which would be charged with enforcement to require the IOU or WSC to comply with the standard, including approving infrastructure improvements.

An IOU and WSC would not be liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This bill would not waive a municipality's immunity and would not create any liability on the part of a municipality under a joint enterprise theory of liability.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1973 was developed with stakeholder input to address concerns that neighborhoods across the state within a municipality's city limits and extraterritorial jurisdiction that are served by water supply corporations (WSCs) and investor owned utilities (IOUs) are not equipped with fire hydrants with adequate pressure (psi) and flow (gallons per minute) to fight fires. Currently, only public utilities serving cities with 1 million or more residents — Houston, San Antonio, and Dallas — are required to comply with fire-flow standards. This bill would expand the standards statewide to ensure communities served by WSCs and IOUs within cities and extraterritorial jurisdictions had access to sufficient fire flows in times of emergency.

The bill also would include liability protection in the event a hydrant was unable to provide adequate water supply in a fire emergency. This change in the law would allow IOUs and WSCs to assist fire departments in fulfilling their governmental responsibility of fighting fires without the fear of getting sued and therefore would encourage cooperation between water systems and fire departments.

Since most IOUs and WSCs do provide adequate fire flows, this bill was designed to protect future communities from a water provider that may consider not providing this basic service. CSHB 1973 would protect Texans from potential disasters by ensuring fire protection infrastructure was available as new communities are built across the state.

While there would be a cost associated with upgrading systems when necessary, it would be up to the IOU or WSC to handle rate equity. This

bill would not directly result in increased rates for those customers that would not benefit from the infrastructure upgrade.

OPPONENTS SAY:

Although this bill would apply only to future development, IOUs and WSCs that do not currently have adequate fire-flow standards could experience cost increases to install new water lines, provide additional storage, install service pumps, and obtain increased water supply capacity. If an IOU or WSC had to incur the costs to raise their standards for a new community, those costs could be spread out over the entire service area, resulting in customers subsidizing an infrastructure upgrade from which they received no benefit.

NOTES:

CSHB 1973 would not have a significant fiscal impact to the state. According to the fiscal note, although the bill would expand the number of entities under TCEQ's regulatory jurisdiction with respect to fire flows, it is not expected to result in significant costs to the agency.

The committee substitute differs from the bill as filed by creating a new section in the Health and Safety Code, whereas the original bill amended existing public safety standards by including water supply corporations and striking language regarding population to include all municipalities and adding a municipality’s extraterritorial jurisdiction.

SUBJECT: Mandatory supervision, parole consideration restriction for injury to child

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Rose, J.D. Sheffield, Toth

0 nays

1 absent — Riddle

WITNESSES: For — Andy Kahan, Victim Advocate, City of Houston; Justin Wood, Harris County District Attorney; Michelle Heinz; Laurie Thompson; (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; Brian Eppes, Tarrant County District Attorney's Office)

Against — (*Registered, but did not testify:* Erica Gammill, League of Women Voters of Texas; Brian McGiverin, Texas Civil Rights Project)

On — Rissie Owens, Board of Pardons and Parole; Matt Simpson, ACLU of Texas; (*Registered, but did not testify:* Stuart Jenkins, Texas Department of Criminal Justice; Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Mandatory supervision.** Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced.

Government Code sec. 508.149(b) makes exceptions to this requirement and prohibits release on mandatory supervision if a parole panel finds that an inmate's good conduct time is not an accurate reflection of his or her potential for rehabilitation and that the inmate's release would endanger the public. Due to this provision, the program is sometimes called discretionary mandatory supervision.

In addition, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of certain crimes. If an inmate is rejected for release to mandatory supervision under this section, parole panels are required to

reconsider the inmate for release to mandatory supervision at least twice in the two years after the rejection.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

Consideration for parole. In general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less. However, some inmates must serve longer portions of their sentences before being eligible for parole consideration.

Government Code sec. 508.141(g) requires the Board of Pardons and Paroles to adopt a policy establishing the dates the board may reconsider for release inmates who have been denied release on parole or mandatory supervision.

For inmates who cannot be released on mandatory supervision, the board can put off reconsideration of parole for up to five years after an initial denial. For offenders not on the list of those prohibited from mandatory supervision, the parole board must reconsider parole annually.

Injury to a child. Penal Code sec. 22.04 makes it a crime to cause injury to a child, elderly individual, or disabled individual:

- intentionally, knowingly, recklessly, or with criminal negligence by act; or
- intentionally, knowingly, or recklessly by omission.

Punishments range from a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) depending on the type of injury and other circumstances.

Offenses causing serious bodily injury or serious mental deficiency, impairment, or injury are first-degree felonies when committed intentionally or knowingly. These offenses are second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000) when committed recklessly. Offenses causing bodily injury are third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000)

when committed intentionally or knowingly.

A person convicted of a first-degree felony for injury to a child, elderly individual, or disabled person currently is prohibited from release on mandatory supervision.

DIGEST:

CSHB 431 would add second-degree and third-degree felony convictions for injury to a child under Penal Code, sec. 22.04 to the list of offenses for which release on mandatory supervision was prohibited.

This change would apply to the release on mandatory supervision of inmates who committed offenses on or after the bill's effective date. Inmates convicted of second- and third-degree injury to a child before, on, or after the bill's effective date could have their parole consideration set off for up to five years after an initial denial.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 431 would ensure that persons who seriously injured children were not released under the state's mandatory supervision program and that a proper amount of time elapsed between parole considerations for these offenders. The need for these changes was brought to light by cases such as that of a four-year-old Texas girl who in 2009 was sexually assaulted and beaten to death. The mother of the girl received a 20-year prison sentence for injury to a child for her part in the horrific crime. Because the offense was not punished as a first-degree felony, the mother became eligible for parole after about two years and must be reconsidered for parole annually.

Currently, offenders who commit the heinous crimes punished as second- and third-degree felonies of injury to a child are eligible for release under the state's mandatory supervision program. Although release under this program can be denied, it can appear to be a presumed release, which requires the parole board to make specific findings to halt the release. By prohibiting release on mandatory supervision, CSHB 431 would recognize that this is inappropriate, given the seriousness of these crimes.

In addition, once these offenders become eligible for parole and are denied, they must be reconsidered annually. Having these offenders come up for parole consideration so often can be traumatic and burdensome for victims who want to weigh in with the parole board on the decision but are

forced to relive the crime each time they do. The bill would address this issue because being on the list of offenses that prohibits release on mandatory supervision allows the parole board to set off subsequent parole considerations for up to five years at a time after the first denial.

CSHB 431 would extend the state's current policy for first-degree injury to a child to the similar, serious crimes of second- and third-degree injury to a child. The difference between these felonies can be very small, making it appropriate to handle mandatory supervision and parole eligibility for all crimes of first-, second-, and third-degree felony injury to a child the same way. Children deserve this protection because they are vulnerable and often cannot or do not speak out.

Under CSHB 431, the parole board still would have flexibility to handle these cases individually and appropriately. When the cases were considered for parole, the board could decide to release or to deny release. In addition, the board would decide how long after an initial parole denial a case would be set off before reconsideration. The board could set off a case anywhere from one to five years, as it deemed appropriate.

Allowing the parole board to set off consideration of these cases for longer periods than under current law would allow the board to focus its resources on other cases. In addition, it would allow rehabilitated offenders more time to demonstrate their readiness to return to society.

OPPONENTS SAY:

Offenders convicted of second- and third-degree injury to a child should remain eligible for mandatory supervision. These are serious offenses, but each case should continue to be considered individually through the mandatory supervision process instead of falling under a blanket provision that works to keep all such offenders in prison longer. Being considered for mandatory supervision does not mean that an offender will be released. Offenders can be denied release on mandatory supervision if release would endanger the public and if good conduct time does not reflect an inmate's potential for rehabilitation. These provisions work to keep appropriate offenders from release under the program.

Allowing the board to delay parole consideration of cases for up to five years after an initial decision could result in the five-year set off becoming the default. This could be too long in some cases in which the factors affecting parole decisions change. Current law creates a fair system of review.

NOTES:

The committee substitute differs from the bill as filed in that it would make five-year set-offs for parole reconsideration apply to offenses committed before, on, or after the bill's effective date.

According to the fiscal note, CSHB 431 would have a negative impact to general revenue related funds of approximately $6 million through fiscal 2014-15 by increasing the length of incarceration for inmates denied release on mandatory supervision.

The companion bill, SB 189 by Huffman, is pending in the Senate Criminal Justice Committee.

SUBJECT: Prohibitions and penalties related to aiding others to vote by mail

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Morrison, Johnson, Klick, Miller, Simmons

1 nay — Wu

1 absent — Miles

WITNESSES: For — Ross Hunt; B R "Skipper" Wallace, Republican County Chair's Association; (*Registered, but not testifying:* Brent Connett, Texas Conservative Coalition; Jonathan Saenz, Texas Values)

Against — Sondra Haltom, Empower the Vote Texas; Glen Maxey, Texas Democratic Party (*Registered, but did not testify:* Michael Cunningham, Texas State Building and Construction Trades Council; Kat Dean, and Matt Simpson, American Civil Liberties Union of Texas; Luis Figueroa, Mexican American Legal Defense and Educational Fund; James Gaston, Texas AFL-CIO)

On — Robin Chandler, Disability Rights Texas; Keith Ingram, Texas Secretary of State Elections Division; Harry White, Office of the Attorney General

BACKGROUND: Election Code, ch. 86 provides for early voting by mail. It outlines the procedures through which voting by mail is carried out, prescribes the form of the mail ballot, ballot envelope, and carrier envelope, and creates offenses relating to voting by mail.

Sec. 86.0051 governs offenses related to the carrier envelope of a mail-in ballot. It is an offense under sec. 86.0051(a) if a person acts who as a witness for a voter in signing the certificate on the carrier envelope knowingly fails to comply with the requirements for signing by a witness.

It is an offense under sec. 86.0051(c) for a person who deposits the carrier envelope of another in the mail or with a common or contract carrier to knowingly fail to provide the person's signature, printed name, and residence address on the reverse side of a carrier envelope. This offense is

a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) unless the person is convicted of an offense for providing unlawful assistance to the same voter in connection with the same ballot, in which case it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000). It is not a defense that the voter voluntarily gave another person possession of the voter's carrier envelope. The offense does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity or is registered to vote at the same address as the applicant.

It is an offense under sec. 86.006(f) to knowingly possess a ballot or official carrier envelope provided to another person. The offense does not apply to a person who does not possess the ballot or carrier envelope with intent to defraud and:

- is related to the voter within the second degree by affinity or the third degree by consanguinity;
- is registered to vote at the same address as the voter;
- is an early voting clerk or a deputy early voting clerk;
- possesses the envelope to deposit in the mail or with a common or contract carrier and who provides a signature, printed name, and residence address in accordance with sec. 86.0051(b);
- is an employee of the U.S. Postal Service working in the normal course of authorized duties; or
- is a common or contract carrier working in the normal course of authorized duties if the ballot is sealed in an official carrier envelope with a delivery receipt for that particular carrier envelope.

Election Code, sec. 86.010 governs procedures for assisting a voter casting a ballot by mail. A person assisting a voter to prepare a mail-in ballot commits an offense if they knowingly fail to provide the person's signature, printed name, and residence address on the official carrier envelope of the voter. This offense does not apply if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, or is registered to vote at the same address as the applicant.

Election Code, sec. 86.013 prescribes the format of the official carrier envelope for a mail-in ballot. Certain prohibitions prescribed by Election Code, sec. 86 and the requirements for legal execution and delivery of the carrier envelope must be printed on the carrier envelope or on a separate sheet accompanying the carrier envelope.

DIGEST:

CSHB 148 would amend the Elections Code by prohibiting certain actions to aid a citizen in casting an early mail ballot and would enhance certain. penalties.

The bill would prohibit a person under Election Code, sec. 86.0051 from depositing more than 10 carrier envelopes containing ballots of others in the mail or with a common or contract carrier. It would prohibit knowingly directing a person or compensating a person to engage in such conduct. This prohibition would not apply to a carrier envelope containing a ballot voted by a member of the U.S. armed forces or the spouse or dependent of a member. Notice of this prohibition would be required to be printed on the reverse side of the carrier envelope or on a separate sheet accompanying the carrier envelope.

Penalties. The offense for knowingly violating this prohibition or knowingly directing a person to engage in such conduct would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

The offense for compensating a person to engage in such conduct would be a misdemeanor (up to one year and not less than 30 days in jail and/or a maximum fine of $4,000), except that if it were shown on trial that the defendant was previously convicted under this section two or more times, it would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

The bill would amend Election Code sec. 86.0051 to make an offense created by that section a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

The bill would remove from the applicability of offenses under Election Code, secs. 86.0051 and 86.010 the exception for persons registered to vote at the same address as the voter.

It would add exceptions to the applicability of offenses under Elections Code, secs. 86.0051 and 86.006 for the employee of a state-licensed care facility or state-certified facility not subject to state licensure who was depositing a carrier envelope or providing voter assistance for a voter who resided in that facility in the normal course of the person's authorized duties. This exception would not apply to offenses under Election Code, sec. 86.0051(a).

It would be an affirmative defense to prosecution under Election Code, sec. 86.0051 and sec. 86.006 if the voter whose carrier envelope was possessed or deposited in violation of these sections requested assistance from the person and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 148 would deter people from collecting numerous early mail ballots, sometimes for compensation, a practice known as ballot or vote harvesting. Ballot harvesting is a problem throughout Texas and illegally interferes with the constitutional right of those who vote by mail. This problem should be prioritized, and the bill would make it clear that these behaviors were not acceptable and would be prosecuted.

Punishing repeat offenders with a state jail felony would be a reasonable and justified penalty. The right to vote is one of the most important constitutional rights citizens have, and people who interfere with or deny others that right should be strongly punished. Escalating the penalty to a felony would be a reasonable deterrent and punishment for a person who showed a lack of remorse and habitual behavior associated with violating this prohibition two or more times.

The requirement in the bill that the offenses be committed knowingly would protect those who may unwittingly mail ballots for friends and neighbors without knowing that they were violating the law. The bill would target ballot harvesters and persons familiar with election law who would use this knowledge to illegally affect the outcomes of elections.

The bill would protect people with disabilities and the elderly. Ballot harvesters target and prey upon these groups, and often influence or misdirect their ballots, effectively taking away their most important constitutional right. The bill would restrict the ability of ballot harvesters to engage in conduct that could affect the ability of a disabled or elderly person to cast a mail-in ballot. The bill would provide exceptions for caretakers to legitimately assist voters to cast their ballots.

CSHB 148 would prohibit what has become a loophole in the election law: the harvesting of large numbers of envelopes carrying ballots in an effort to affect the outcomes of elections. There is currently no limit on the

number of others' ballots one person can deliver over the course of an election. Ten ballots is a reasonable maximum that would criminalize a serious ballot-harvesting practice that the current law does not cover.

OPPONENTS SAY:

CSHB 148 not only would be an unnecessary and ineffective deterrent to the alleged voting fraud it aims to prevent, but it would make it more difficult for people with disabilities and the elderly to vote.

These populations disproportionately vote by mail and often need assistance filling and mailing their ballots. By criminalizing the conduct of people who try to assist voters, the bill would have the effect of restricting voting assistance these populations may need.

The bill would make criminals of good Samaritans and neighbors. The prohibition against depositing more than 10 carrier envelopes would apply to people who had no intent to defraud, and honest, law-abiding citizens carrying the mail to the mailbox for their friends, neighbors, or roommates could be prosecuted under the provision. Placing an arbitrary limit on the number of envelopes one person could deposit in the mail, regardless of their intent to defraud, would accomplish little more than the criminalization of good citizens.

The enhancements created by the bill would not provide a disincentive to those who participate in or organize ballot-harvesting campaigns. Carrier envelopes already contain printed information about prohibited conduct and offenses under the Election Code and these do not deter whatever efforts there may be to fraudulently influence elections via ballot harvesting.

The creation of a new state jail felony under this section would be unnecessarily harsh and disproportionate. Current law provides reasonable penalties, including felonies for the most egregious acts. Imposing a state jail felony for compensating persons who engage in prohibited conduct would be unreasonable and unnecessarily waste state resources on the heightened demands of prosecuting and incarcerating these individuals for a felony rather than a misdemeanor.

CSHB 148 could deprive voters of rights under the federal Voting Rights Act. A voter who qualifies for assistance may ask certain people of their choice to assist them with the voting process. Under CSHB 148, a voter who asked a friend or neighbor to help with a mail-in ballot would be

denied this right if the friend or neighbor had already helped 10 others. A person who is considered trustworthy may be asked to assist more than 10 voters in one election. This would be an unacceptable denial of rights under the Voting Rights Act.

OTHER OPPONENTS SAY:

CSHB 148 is unnecessary because much of the fraudulent activity it intends to prevent is already illegal. The activity that constitutes ballot harvesting is already prohibited under provisions of the Election Code and other state and federal law. The offenses created by this bill would either be redundant or criminalize behavior that is not fraudulent and does not need to be prohibited.

NOTES:

CSHB 148 differs from the bill as filed by:

- removing penalty enhancements under Election Code, sec. 64.036(d) and sec. 86.010(g);
- changing the penalty enhancements for a Class B misdemeanor under Election Code, sec. 86.0051(d) from a state jail felony to a Class A misdemeanor, and removing the penalty enhancement for a state jail felony under this section;
- increasing the number of carrier envelopes a person may deposit for others from two to 10;
- adding the exception for carrier envelopes containing ballots voted by members of the Armed Forces or their spouses or dependents;
- adding language to provide an exception for an employee of state-certified or state-licensed care facilities;
- adding the affirmative defenses for caretakers;
- adding the requirement relating to language that must be printed on the carrier envelope; and
- adding offenses for knowingly directing others and for compensating others to engage in prohibited conduct.

SUBJECT: Telepractice and licensing in speech-language pathology and audiology

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Lawrence Higdon, Texas Speech, Language, Hearing Association; (*Registered, but did not testify:* Dan Finch, Texas Medical Association; Scott Pospisil, Texas Hearing Aid Association; Bradford Shields, Texas Academy of Audiology; Bobbie Kay Turkett, Texas Speech Language Hearing Association)

Against — None

On —Joyce Parsons, State Board of Examiners for Speech-Language Pathology and Audiology

DIGEST: CSHB 1549 would amend Occupations Code, ch. 401, which governs speech-language pathologists and audiologists, and ch. 402, which governs hearing instrument fitters and dispensers.

Telepractice. CSHB 1549 would define "telepractice" as the use of telecommunications technology by a license holder for an assessment, intervention, or consultation regarding a speech-language pathology or audiology client. It also would refer to the use of telecommunications technology by a license holder for the fitting and dispensing of hearing instruments.

The State Board of Examiners for Speech-Language Pathology and Audiology and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, with the assistance of the Department of State Health Services (DSHS), would jointly adopt rules for fitting and dispensing hearing instruments by telepractice by January 1, 2014.

The State Board of Examiners for Speech-Language Pathology and Audiology could adopt rules, consistent with the joint rules above, for the practice of speech-language pathology or audiology by telepractice, including rules that established the qualifications and duties of license holders**.**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments could adopt rules, consistent with the joint rules for fitting and dispensing hearing instruments by telepractice, that established the qualifications and duties of license holders.

Licensing and practice. The State Board of Examiners for Speech-Language Pathology and Audiology would be required to issue a license to a military service member's spouse who:

- held a valid speech-language pathologist or audiologist license from another state;
- had a master's degree from a board-approved, accredited program in an area of communicative sciences or disorders; and
- had not been subject to disciplinary action in any jurisdiction in which he or she had been licensed.

CSHB 1549 would eliminate specific course and continuing education requirements for a person to be licensed as a speech-language pathologist or audiologist. It also would eliminate a requirement for the board to notify examinees of the results of a licensing exam within 30 days after the date it was administered.

The board would repeal sections of the Occupations Code that govern:

- the issuance of temporary speech-pathology and audiology licenses;
- the issuance of licenses for limited practice in public schools; and
- notification to license holders of information on and changes to continuing education requirements

CSHB 1594 would remove the requirement for a person in an industrial setting to be certified by an agency acceptable to the Occupational Safety and Health Administration before engaging in hearing testing as part of a hearing conservation program.

The bill would authorize the board to issue an audiologist license to a

person with a master's degree in audiology who was licensed as an audiologist in Texas between September 1, 2007 and September 1, 2011, if the person submitted a new application before September 1, 2014.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Telepractice. CSHB 1549 would set rules to govern use of telepractice in all areas of speech-pathology and audiology. Texas speech-pathologists and audiologists use telepractice to safely treat patients in underserved areas who otherwise could not access health care. In telepractice, a licensed practitioner would have to see the patient in person before using the technology in the future for partial evaluation, therapy or review of an examination.

Telepractice is not yet used for hearing aids or diagnosis, but CSHB 1549 would set rules to govern the eventual use in these areas. The bill would also ensure that the telepractice rules adopted by the State Board of Examiners for Speech-Language Pathology and Audiology and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments would not conflict.

Licensing. CSHB 1549 would make it easier and faster for military spouses to transfer their speech-language pathology or audiology licenses to Texas from a different state. Allowing military spouses to easily transfer their licenses could help address a shortage in speech-language pathologists in Texas.

CSHB 1549 would also clean up parts of statute that refer to obsolete requirements or unnecessary practices. The board has not issued temporary licenses and limited licenses for practice in public schools for almost a decade. While the board does receive examinees' scores from the board-approved Praxis licensing exam, Educational Testing Service, which administers the exam, sends scores directly to examinees. It is unnecessary for examinees to receive another copy of their results from the board.

License holders no longer need to be notified one year before changes are made to continuing education requirements because the availability of online courses makes it easier for license holder to fulfill their requirements. CSHB 1549 also would align Texas licensing requirements with changes universities have made to their speech-language pathology

and audiology degree programs. Finally, as OSHA is no longer part of licensing practice, a licensee should not have to be certified by an OSHA-approved agency to conduct hearing testing.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, SB 312 by Hegar, was passed by the Senate on the local and uncontested calendar on April 18 and has been referred to the House Public Health Committee.

The committee substitute differs from the bill as filed in that it would require the joint adoption of rules governing telepractice by January 1, 2014; remove from the bill as filed a provision that would have required a licensee to have coursework in swallowing disorders and language that would have expanded the scope of practice for audiologists to provide therapy for balance functions; and retain provisions regulating audiometric testing that the original would have repealed.

SUBJECT: Expanding eligibility to be medical examiner in underserved areas

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

WITNESSES: For — Betsy Keller, County of El Paso; (*Registered, but did not testify:* Steve Bresnen and Kevin McCary, El Paso County)

Against — None

BACKGROUND: Code of Criminal Procedure art. 49.25 establishes the duties and qualifications of medical examiners. Under sec. 2, commissioners courts appoint the medical examiner, who must be a physician licensed by the Texas Medical Board.

Occupations Code, sec. 155.101 allows the Texas Medical Board to grant a provisional license for a physician to practice medicine only in a location:

- designated by the federal government as a health professional shortage area; or
- designated by the federal or state government as a medically underserved area.

DIGEST: CSHB 1192 would expand the criteria governing eligibility to be appointed a medical examiner by allowing appointment of a person who:

- was licensed and in good standing as a physician in another state;
- had applied to the Texas Medical Board for a license to practice in Texas; and
- had been granted a provisional license under Occupations Code, sec. 155.101.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1192 would help attract more qualified medical examiners to the underserved areas of Texas.

Medical examiners are forensic pathologists, employed by counties, who determine the cause of death when someone passes away suspiciously or unexpectedly or in other situations such as suicides and certain child deaths. These officials are important to the criminal justice and public health systems, and while large counties are required to establish a medical examiners' office, any county may do so. The National Academy of Sciences has reported that there are fewer than 500 full-time forensic pathologists nationwide, forcing Texas counties to compete with hospitals, government agencies, and private entities for the services of this small group.

Recruiting and retaining medical examiners has become increasingly difficult for medically underserved areas. For example, the medical examiner's office in El Paso has been vacant since 2010. In three years of searching and interviewing, no new hire has been made. Current law requires medical examiners to be physicians licensed by Texas, which severely limits the number of qualified candidates. Because the process to obtain a Texas medical license can be lengthy and costly, it can be difficult to recruit forensic pathologists from outside of Texas.

CSHB 1192 would address this problem by expanding the pool of those who could be appointed medical examiner in designated health shortage or medically underserved areas to include qualified doctors licensed in other states who meet the criteria in the bill. This would allow certain counties to hire out-of-state doctors and allow them to work as an examiner while obtaining their Texas medical license.

The bill would not lower current standards or lead to poorly qualified doctors being appointed medical examiner. An examiner from another state would have to be licensed and in good standing and have been granted a provisional license by the Texas Medical Board. The board has statutory requirements for provisional licenses, including passage of a board-recognized exam. Provisional licenses are good for about nine months, ensuring that an out-of-state doctor would obtain a Texas license in a reasonable amount of time.

CSHB 1192 would be tailored to help those areas of Texas most in need of

medical examiners. Those who receive provisional licenses must practice only in designated health shortage or medically underserved areas. If the bill were broadened to allow out-of-state doctors to work as medical examiners anywhere in the state, underserved areas might lose candidates to areas where examiners were not as difficult to recruit.

OPPONENTS SAY:

CSHB 1192 would deepen the pool of medical examiner candidates only for designated health shortage and medically underserved areas. It might be better to enact a broader bill that would allow an out-of-state licensed doctor applying for a Texas license to work as a medical examiner anywhere in the state.

NOTES:

Both the committee substitute and the bill as introduced would allow medical examiners who were not licensed in Texas and who were in good standing in another state to be eligible to be a medical examiner. However, the original bill also would have required that these doctors be seeking licensure in Texas. The committee substitute eliminated this requirement and added the requirements that a medical examiner must have applied for a Texas license and been granted a provisional license.

A similar companion bill, SB 336 by Rodriguez, has been approved by the Senate on the local and uncontested calendar and referred to the House Criminal Jurisprudence Committee.